

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Bob Allpress**

State of Nebraska)
) ss.
Keya Paha County)

1 **Q: Please state your name.**

2 A: My name is Bob Allpress. I am a member of Allpress Brothers, LLC.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Keya Paha County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Rancher.

EXHIBIT

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1 **Q: If you are you married tell us your spouse's name please?**

2 A: Nancy Allpress.

3 **Q: If you have grandchildren how many do you have?**

4 A: We have three grandsons.

5 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
6 **and or your family?**

7 A. Yes.

8 **Q: For the land that would be affected and impacted by the proposed KXL tar**
9 **sands pipeline give the Commissioners a sense how long the land has been in**
10 **your family and a little history of the land.**

11 A: Allpress Brothers' LLC is a family owned ranch between myself and my two
12 brothers. Our property was homesteaded by the Allpress family in 1886. This
13 makes it one of the oldest, if not oldest, continuously owned homestead, by one
14 family, in Keya Paha County. Currently, my wife and I are the only partners living
15 full time on the ranch.

16 **Q: Do you earn any income from this land?**

17 A: Yes.

18 **Q: Have you depended on the income from your land to support your livelihood**
19 **or the livelihood of your family?**

20 A: Yes.

21 **Q: Have you ever in the past or have you thought about in the future leasing all**
22 **or a portion of your land in question here?**

23 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
24 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
25 all the restrictions and risks and potential negative impacts to farming or ranching
26 operations as opposed to land that did not have those same risks. If I was looking
27 to lease or rent ground I would pay more for comparable non-pipeline land than I
28 would for comparable pipeline land and I think most folks would think the same
29 way. This is another negative economic impact that affects the landowner and the

1 county and the state and will forever and ever should TransCanada's preferred or
2 mainline alternative routes be approved. If they were to twin or closely parallel to
3 Keystone I the vast majority of landowners would be those that already have a
4 pipeline so there would be considerable less new incremental negative impacts.

5 **Q: Do you have similar concerns about selling the land?**

6 A: Well I hope not to have to sell the land in my lifetime but times change and you
7 never know what is around the corner and yes I am concerned that if another piece
8 of ground similar to mine was for sale and it did not have the pipeline and mine
9 did that I would have a lower selling price. I think this would be true for pipeline
10 ground on both the preferred and mainline alternative routes.

11 **Q: What is your intent with your land after you die?**

12 A: Like I said I hope not to have to sell and I hope that it stay in the family for years
13 to come and that it passes to our three grandsons but I have thought about getting
14 out if this risky pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
16 Pipeline would cross the land described above and owned by you?**

17 A: Yes.

18 **Q: When you first learned about this possibility what did you think and what did
19 you do next?**

20 A: When we first heard that the KXL pipeline was rerouted and would now cross our
21 property, we went to TransCanada's seminars with an open mind and our concerns.
22 At the first meeting, we expressed our concerns of location of route, as they were
23 not aware of our ranch house, buildings, and five (5) potable water wells. Also
24 explained to them was the unstable terrain, continually shifting river course, and
25 endangered species that exist on the proposed route. When we received no follow
26 up response, we went to their second seminar to get more answers and reiterate
27 our concerns. We left the seminar realizing they were willing to take our concerns
28 into consideration, only if we signed a survey easement. At this point, we knew
29 they did not care about our issues. Their only concern was to secure easements.

1 This is where they told us that if we didn't sign their easement offers, they would
2 go to eminent domain lawsuits to secure the route.

3 **Q: What happened next?**

4 A: Shortly after the last meeting, we spotted strange trucks on the neighbors land and
5 close to our property line. When we approached them, we saw a couple of guys
6 with surveying equipment at our fence, and 3 others, including a man who turned
7 out to be the crew supervisor, exploring an early 1900s abandoned schoolhouse,
8 that was well off the route they were surveying. The supervisor came to the fence
9 line with an apparent attitude. He demanded to know who we were. We told him
10 and informed him that he and his crew had no permission to cross the fence survey
11 on our land. His insolent attitude continued through the conversation. We ended
12 the meeting by enforcing our position by telling them that if we found them on
13 their property, the Keya Paha County sheriff would be called and they would be
14 arrested.

15 **Q: Did you attend any other related meetings that stand out to you?**

16 A: At a later date that year, we attended a "Road Haul" agreement meeting between
17 TransCanada and the Keya Paha County commissioners. We were sitting next to
18 Mark Johnson, TransCanada's construction representative. When my wife told him
19 that she did not want the pipeline on our property and that she would be able to see
20 the desecration less than 200 yards away out her kitchen window, he flippantly
21 told her that was good, as she would be able to make lunch for the construction
22 workers.

23 **Q: Were you or an entity for which you are a member, shareholder, or director**
24 **previously sued by TransCanada Keystone Pipeline, LP?**

25 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
26 petition for condemnation against our land so it could place its proposed pipeline
27 within an easement that it wanted to take from us on our land.

28 **Q: Did you defend yourself and your land in that condemnation action?**

1 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
2 and expenses in our resistance of TransCanada's lawsuit against us.

3 Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
4 incurred?

5 A: No, they have not.

6 Q: In its lawsuit against you, did TransCanada identify the amount of your
7 property that it wanted to take for its proposed pipeline?

8 A: The lawsuit against us stated they would take the amount of property that is
9 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
10 and equipment reasonably necessary to operate the pipeline.

11 Q: Did TransCanada define what they meant by "property that is reasonably
12 necessary"?

13 A: No, they did not.

14 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
15 property portion of your land?

16 A: Yes, they did.

17 Q: Did TransCanada describe what rights it proposed to take related to the
18 eminent domain property on your land?

19 A: Yes, they did.

20 Q: What rights that they proposed to take did they describe?

21 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
22 operate, and maintain the pipeline and the plant and equipment reasonably
23 necessary to operate the pipeline, specifically including surveying, laying,
24 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
25 reconstructing, removing and abandoning one pipeline, together with all fittings,
26 cathodic protection equipment, pipeline markers, and all their equipment and
27 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
28 petroleum products, and all by-products thereof."

1 **Q: Prior to filing an eminent domain lawsuit to take your land that**
2 **TransCanada identified, do you believe they attempted to negotiate in good**
3 **faith with you?**

4 **A: No, I do not.**

5 **Q: Did TransCanada at any time approach you with or deliver to you their**
6 **proposed easement and right-of-way agreement?**

7 **A: Yes, they did.**

8 **Q: At the time you reviewed TransCanada's easement and right-of-way**
9 **agreement, did you understand that they would be purchasing a fee title**
10 **interest in your property or that they were taking something else?**

11 **A: I understood that they proposed to have the power to take both a temporary**
12 **construction easement that could last for a certain period of time and then also a**
13 **permanent easement which they described to be 50 feet across or in width, and**
14 **that would run the entire portion of my property from where a proposed pipeline**
15 **would enter my property until where it would exit the property.**

16 **Q: Is the document included with your testimony here as Attachment No. 3, a**
17 **true and accurate copy of TransCanada's proposed Easement and Right-of-**
18 **Way agreement that they included with their condemnation lawsuit against**
19 **you?**

20 **A: Yes, it is.**

21 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
22 **and Right-of-Way agreement?**

23 **A: Yes, I have.**

24 **Q: What is your understanding of the significance of the Easement and Right-of-**
25 **Way agreement as proposed by TransCanada?**

26 **A: My understanding is that this is the document that will govern all of the rights and**
27 **obligations and duties as well as the limitations of what I can and cannot do and**
28 **how I and any future landowner and any person I invite to come onto my property**

1 must behave as well as what TransCanada is and is not responsible for and how
2 they can use my land.

3 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
4 **agreement do you have any concerns about any portions of it or any of the**
5 **language either included in the document or missing from the proposed**
6 **document?**

7 **A:** Yes, I have a number of significant concerns and worries about the document and
8 how the language included and the language not included potentially negatively
9 impacts my land and thereby potentially negatively impacts my community and
10 my state.

11 **Q: I would like you to walk the Commissioners through each and every one of**
12 **your concerns about TransCanada's proposed Easement and Right-of-Way**
13 **agreement so they can develop an understanding of how that language and**
14 **the terms of that contract, in your opinion, potentially negatively impacts you**
15 **and your land. So, if you can start at the beginning of that document and**
16 **let's work our way through it, okay?**

17 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
18 Easement and Right-of-Way agreement and how it negatively could affect my
19 property rights and my economic interests.

20 **Q. Okay, let's start with your first concern please.**

21 **A:** The very first sentence talks about consideration or how much money they will
22 pay to compensate me for all of the known and unknown affects and all of the
23 rights I am giving up and for all the things they get to do to my land and for what
24 they will prevent me from doing on my land and they only will pay me one time at
25 the signing of the easement agreement. That is a huge problem.

26 **Q: Explain to the Commissioners why that is a problem.**

27 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada's shareholders
10 keep all that money and it never finds its way to Nebraska.

11 **Q: What is your next concern?**

12 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
13 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
14 limited partnership...” and I have no idea who that really is. I have no idea who is
15 forcing this pipeline on us or who the owners of the entities are, or what are the
16 assets backing this limited partnership, or who the general partner is, or who all
17 the limited partners are, and who makes up the ownership of the these partners or
18 the structure or any of the basic things you would want to know and understand if
19 you would want to do business with such an outfit. According to TransCanada's
20 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
21 liability company called TransCanada Keystone Pipeline GP, LLC is the general
22 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
23 basically nothing. That is really scary since the general partner has the liability but
24 virtually none of the ownership and who knows if it has any other assets.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who could become the owner of over 275 miles of**
27 **Nebraska land?**

28 A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow the easement to be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

A: Then it says "...a perpetual permanent easement and right-of-way..." and this really concerns me. Why does the easement and right-of-way have to be perpetual and permanent? That is the question myself and my family want an answer to. Perpetual to me is like forever and that doesn't make sense.

Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?

A: For many reasons but mostly because the tar sands are finite. I am unaware of any data proving there is a perpetual supply of tar sands. I am not aware in TransCanada's application where it proves there is a perpetual necessity for this pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become
2 obsolete or no longer needed. Nothing manmade lasts forever. My land however
3 will, and I want my family or future Nebraska families to have that land as
4 undisturbed as possible and it is not in my interest or the public interest of
5 Nebraska to be forced to give up perpetual and permanent rights in the land for
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 A: The easement language includes all these things TransCanada can do and it says
9 "...abandoning in place..." so they can just leave this pipeline under my ground
10 until the end of time just sitting there while they are not using it, but I am still
11 prevented from doing on my land and using my land what I would like. If I owned
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
13 there. It doesn't make sense and it scares me and it is not in my interest or the
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
16 **right?**

17 A: Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 A: Here the Easement identifies a 24-month deadline to complete construction of the
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period
21 starts to run from the moment "actual pipeline installation activities" begin on
22 Landowners property. It appears that TransCanada would define this phrase as
23 needed. It would be wise to explain what types of TransCanada action constitutes
24 "installation activity" For instance, would the placement and storage of an
25 excavator or other equipment on or near the Easement property be an activity or
26 would earth have to be moved before the activity requirement is triggered. This
27 vague phrase is likely to lead to future disputes and litigation that is not in the best
28 interest of the welfare of Nebraska and would not protect property interests. The
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events
2 occur that are completely out of their control. In TransCanada's easement this is
3 expanded to include "without limitation...availability of labor and materials."
4 Extending this language to labor and materials is problematic because these are
5 two variables that TransCanada does have some or significant control over and to
6 allow extension of the 24-month period over events not truly out of the control of
7 TransCanada and without further provision for compensation for the Landowner is
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially
12 reasonable costs and expenses" will pay for damages caused but then limits
13 TransCanada's liability to certain circumstances. There is no definition of
14 "commercially reasonable" and no stated right that the Landowner would get to
15 determine the amounts of cost or expense that is "commercially reasonable."
16 TransCanada excepts out from their liability any damages that are caused by
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of
18 Landowner. It is understandable that if the Landowner were to willfully and
19 intentionally cause damages to the pipeline that Landowner should be liable.
20 However, anything short of willful misconduct should be the liability of
21 TransCanada who is subjecting the pipeline on the Landowner and who is making
22 a daily profit from that pipeline. When evaluating the impact on property rights of
23 this provision, you must consider the potentially extremely expensive fight a
24 Landowner would have over this question of whether or not damage was an act of
25 negligence. Putting this kind of potential liability upon the Landowner is
26 incredibly problematic and is detrimental to the protection of property rights. I
27 don't think this unilateral power which I can't do anything about as the landowner
28 is in the best economic interest of the land in question or the State of Nebraska for
29 landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes in necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

1 A: The Easement also allows some rights for Landowner but restricts them at the
2 same time and again at the sole and unilateral decision making of TransCanada.
3 TransCanada will determine if the actions of Landowner might in anyway
4 endanger or obstruct or interfere with TransCanada's full use of the Easement or
5 any appurtenances thereon of to the pipeline itself or to their access to the
6 Easement or within the Easement and TransCanada retains the right at any time,
7 whether during growing season or not, to travel "within and along Easement Area
8 on foot or in vehicle or machinery..." Further, at TransCanada's sole discretion it
9 will retain the rights to prevent any landowner activity that it thinks may
10 "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement
11 Area. Such undefined and unilateral restrictions are not conducive to the
12 protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
15 Landowner's land any debris of any kind without any input or power of
16 Landowner to demand an alternative method or location of debris disposal. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
21 "where rock is encountered" mean and why does TransCanada solely get to
22 determine whether or not this phrase is triggered. This phrase could be used to
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively
25 affect Landowners property are not conducive to the protection of property rights.
26 A shallow pipeline is much more likely to become a danger and liability in the
27 future given farming operations and buried irrigation lines and other factors
28 common to the current typical agricultural uses of the land in question impacted
29 by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada’s taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to an future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiate any of the language in
2 question to which it will be held to comply.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
5 Easement to any person, company, country, etc. at their sole discretion at any time
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined terms are as follows:

- 18 i. "pipeline installation activities"
- 19 ii. "availability of labor and materials"
- 20 iii. "commercially reasonable costs and expenses"
- 21 iv. "reasonably anticipated and foreseeable costs and expenses"
- 22 v. "yield loss damages"
- 23 vi. "diminution in the value of the property"
- 24 vii. "substantially same condition"
- 25 viii. "an actual or potential hazard"
- 26 ix. "efficient"
- 27 x. "convenient"
- 28 xi. "endangered"
- 29 xii. "obstructed"

- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q:** Did TransCanada ever offer you financial compensation for the rights that
2 they sought to obtain in your land, and for what they sought to prevent you
3 and any future land owner of your property from doing in the future?

4 **A:** Yes, we received an offer from them.

5 **Q:** As the owner of the land in question and as the person who knows it better
6 than anyone else, do you believe that TransCanada offered you just, or fair,
7 compensation for all of what they proposed to take from you so that their tar
8 sands pipeline could be located across your property?

9 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and affects and the rights that I'm giving up, and
11 what I will be prevented from doing in the future and how their pipeline would
12 impact my property for ever and ever.

13 **Q:** Has TransCanada at any time offered to compensate you annually, such as
14 wind farm projects do, for the existence of their potential tar sands pipeline
15 across your property.

16 **A:** No, never.

17 **Q:** At any time did TransCanada present you with or request that you, as the
18 owner of the land in question, sign and execute a document called, "Advanced
19 Release of Damage Claims and Indemnity Agreement?"

20 **A:** Yes, they did.

21 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
22 "Advanced Release of Damage Claims and Indemnity Agreement?"

23 **A:** Yes, it is.

24 **Q:** What was your understanding of that document?

25 **A:** When I read that document in the plain language of that document, it was my
26 understanding that TransCanada was attempting to pay me a very small amount at
27 that time in order for me to agree to give up my rights to be compensated from
28 them in the future related to any damage or impact they may have upon my

1 property "arising out of, in connection with, or alleged to resulted from
2 construction or surveying over, under or on" my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A: Because I do not believe that it is fair or just to try to get me to agree to a small
7 sum of money when I have no idea how bad the impacts or damages that they, or
8 their contractors, or subcontractors, or other agents or employees, may cause on
9 my land at any time in the future that resulted from the construction or surveying
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
13 shield themselves against known and foreseeable impacts that their pipeline, and
14 the construction of it, would have upon my land. It made me feel that they knew it
15 was in their financial interest to pay me as little as possible to prevent me from
16 ever having the opportunity to seek fair compensation again, and that this must be
17 based upon their experience of unhappy landowners and situations in other places
18 where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you**
20 **thought their proposed location of their proposed pipeline across your land**
21 **was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you**
24 **thought their proposed location of their proposed pipeline across your land**
25 **was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
28 **Takings Clause?**

29 A: Yes, I am.

1 **Q:** What is your understanding of the Fifth Amendment as it relates to taking of
2 an American citizens property?

3 **A:** My understanding is that, according to the United States Constitution, that if the
4 government is going to take land for public use, then in that case, or by taking for
5 public use, it can only occur if the private land owner is compensated justly, or
6 fairly.

7 **Q:** Has TransCanada ever contacted you specially to explain the way in which
8 the public could use its proposed Keystone XL Pipeline?

9 **A:** No, they have not.

10 **Q:** Can you think of any way in which the public, that is the citizens of the State
11 of Nebraska, can directly use the proposed TransCanada Keystone XL
12 Pipeline, as it dissects the State of Nebraska?

13 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
14 public benefits from this pipeline in any way, how they can use it any way, or how
15 it's in the public interest in any way. By looking at the map, it is quite clear to me
16 that the only reason it's proposed to come through Nebraska, is that because we
17 are geographically in the way from between where the privately-owned Tar Sands
18 are located to where the TransCanada wants to ship the Tar Sands to refineries in
19 Houston, Texas.

20 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
21 crude petroleum, or oil and petroleum by-products that you would like to
22 ship in its pipeline?

23 **A:** No, it has not.

24 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
25 products that you, at this time or any time in the future, would desire to place
26 for transport within the proposed TransCanada Keystone XL Pipeline?

27 **A:** No, I do not.

1 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
2 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
3 products within the proposed TransCanada Keystone XL Pipeline?

4 **A:** No, I do not. I've never heard of such a person or company like that.

5 **Q:** Do you pay property taxes for the land that would be affected and impacted
6 at the proposed TransCanada Keystone XL Pipeline?

7 **A:** Yes, I do.

8 **Q:** Why do you pay property taxes on that land?

9 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
10 of that property.

11 **Q:** Because you follow the law and pay property taxes, do you believe you
12 deserve any special consideration or treatment apart from any other person
13 or company that pays property taxes?

14 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
15 just what you do.

16 **Q:** Do you believe the fact that you pay property taxes entitles you to special
17 treatment of any kind, or special rights of any kind?

18 **A:** No, of course not.

19 **Q:** Do you believe the fact that you pay property taxes on your land would be
20 enough to qualify you to have the power of eminent domain to take land of
21 your neighbors or other people in your county, or other people across the
22 state of Nebraska?

23 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
24 I expect an award for or any type of special consideration.

25 **Q:** Have you at any time ever employed any person other than yourself?

26 **A:** Well, yes I have.

27 **Q:** Do you believe that the fact that you have, at some point in your life,
28 employed one or more other persons entitle you to any special treatment or

1 consideration above and beyond any other Nebraskan that has also employed
2 one or more persons?

3 A: No, of course not.

4 Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer
5 have at one point employed another person within this state, entitles you to
6 preferential treatment or consideration of any kind?

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 Q: Do you have any concerns TransCanada's fitness as an applicant for a major
10 crude oil pipeline in its preferred location, or ultimate location across the
11 state of Nebraska?

12 A: Yes, I have significant concerns. TransCanada representatives have made many
13 statements that have turned out to not be true, made threats and conducted
14 coercion, and generally purveyed a condescending attitude towards the
15 landowners' during this whole event. I am aware of landowners being treated
16 unfairly or even bullied around and being made to feel scared that they did not
17 have any options but to sign whatever papers TransCanada told them they had to. I
18 am aware of folks being threatened that their land would be taken if they didn't
19 follow what TransCanada was saying. I am aware of tactics to get people to sign
20 easements that I don't believe have any place in Nebraska or anywhere such as
21 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
22 landowners and convince them they should sign TransCanada's easement
23 agreements. I am aware of older folks and widows or widowers feeling they had
24 no choice but to sign TransCanada's Easement and they didn't know they could
25 fight or stand up for themselves. From a more practical standpoint, I am worried
26 that according to their answer to our Interrogatory No. 211, TransCanada only
27 owns and operates one (1) major oil pipeline. They simply do not have the
28 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 **A: No, I do not.**

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 **A:** Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 **A:** The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska.

4 **Q: Do you have any concerns about the environmental impact of the proposed**
5 **pipeline?**

6 A: Yes, I do.

7 **Q: What are some of those concerns?**

8 A: As an affected land owner and Nebraskan, I am concerned that any construction,
9 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
10 a detrimental impact upon the environment of my land specifically, as well as the
11 lands near my land and surrounding the proposed pipeline route.

12 **Q: Do you have other environmental concerns?**

13 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
14 construction and/or maintenance and operation. I am concerned about spills and
15 leaks that TransCanada has had in the past and will have in the future. This could
16 be catastrophic to my operations or others and to my county and the State.

17 **Q: Do you have any thoughts regarding if there would be an impact upon the**
18 **natural resources on or near your property due to the proposed pipeline?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
21 resources of my land, and the lands near and surrounding the proposed pipeline
22 route.

23 **Q: Do you have any worries about potential impacts from the proposed pipeline**
24 **to the soil of your land, or land near you?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
27 land, as well as land along and surrounding the proposed pipeline route. This
28 includes, but is not limited to, the reasons that we discussed above of disturbing
29 the soil composition and makeup as it has ~~and~~ naturally existed for thousands and

1 millions of years during the construction process, and any future maintenance or
2 removal process. I'm gravely concerned about the fertility and the loss of
3 economic ability of my property to grow the crops, or grow the grasses, or grow
4 whatever it is at that time they exist on my property or that I may want to grow in
5 the future, or that a future owner may want to grow. The land will never be the
6 same from as it exists now undisturbed to after it is trenched up for the proposed
7 pipeline.

8 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
9 **upon the groundwater over your land, or surrounding lands?**

10 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
11 the proposed Keystone XL Pipeline would have a detrimental impact upon the
12 groundwater of not only under my land, but also near and surrounding the pipeline
13 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
14 simple and it is simply too valuable to our State and the country to put at
15 unreasonable risk.

16 **Q: Do you have any concern about the potential impact of the proposed pipeline**
17 **upon the surface water on, or near or around your land?**

18 A: Yes, I have significant concerns that any construction, operation, and/or
19 maintenance of the proposed Keystone XL Pipeline would have detrimental
20 impact upon the surface water of not only within my property boundary, but along
21 and near and surrounding the pipeline route, and in fact, across the state of
22 Nebraska.

23 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
24 **upon the wildlife and plants, other than your growing crops on or near your**
25 **land?**

26 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
27 the proposed Keystone XL Pipeline would have a detrimental impact upon the
28 wildlife and the plants, not only not only that are located on or can be found upon
29 my land, but also near and along the proposed pipeline route.

Q: Do you have any concerns about the effects of the proposed pipeline upon the fair market value of your land?

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the fair market value at any point in the future, especially at that point in which I would need to sell the property, or someone in my family would need to sell the property. I do not believe, and certainly would not be willing to pay, the same price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 6, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

Q: Do you believe that TransCanada's preferred route as found on page 5 of its Application, and as found on Attachment No. 7, here to your testimony, is in the public interest of Nebraska?

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the I-90 corridor alternative route, specifically for the portion
7 of the proposed pipeline within Nebraska as found in Attachment No. 6 to
8 your testimony, is in the public interest of Nebraska?

9 A: No, I do not.

10 Q: Do you believe there is any potential route for the proposed Keystone XL
11 Pipeline across, within, under, or through the State of Nebraska that is in the
12 public interest of the citizens of Nebraska?

13 A: No, I do not.

14 Q: Why do you hold that belief?

15 A: Because there simply is no public interest based on all of the factors that I am
16 aware and that I have read and that I have studied that this Commission is to
17 consider that would establish that a for-profit foreign-owned pipeline that simply
18 crosses Nebraska because we are geographically in the way between where tar
19 sands are in Canada to where it wants to ship it to in Texas could ever be in the
20 public interest of Nebraskans. We derive no benefit from this project. It is not for
21 public use. Nebraska is simply in the way and when all considerations are taken in
22 there is no net benefit of any kind for Nebraska should this project be placed in our
23 state. Even if there was some arguable "benefit" it is not enough to outweigh all
24 the negative impacts and concerns.

25 Q: What do you think about the applicant, TransCanada's argument that it's
26 preferred route for its proposed Keystone XL Pipeline is in the public interest
27 of Nebraska because it may bring temporary jobs during the construction
28 phase to Nebraska?

1 A: First of all, not all jobs are created equally. Most jobs that are created, whether
2 temporary or on a permanent basis, don't come with a project that has all the
3 potential and foreseeable negative impacts, many of which we have discussed here
4 and other witnesses throughout the course of this hearing have and will discuss. If
5 I decide to hire and employ someone to help me out in my farming or ranching
6 business, I've created a job but I haven't done so at the risk or detrimental impact
7 to my land or my town or my county or my state. And I've hired someone who is
8 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
9 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
10 jobs are not created equal. Additionally, I understand from what I'm familiar with
11 from TransCanada's own statements that the jobs numbers they originally touted
12 were determined to be a minute fraction of the permanent jobs that had been
13 projected. According to their answer to our Interrogatory No. 191, TransCanada
14 has created only thirty-four (34) jobs within Nebraska working specifically on
15 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
16 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
17 Further, according to their answer to Interrogatory No. 199, TransCanada would
18 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
19 constructed on its Preferred Route or its Mainline Alternative Route.

20 Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply
21 because it would cross your land?

22 A: No, absolutely not. I am opposed to this project because it is not in the public
23 interest, neither within my community nor within our state.

24 Q: Would you be happier if instead of crossing your land, this proposed pipeline
25 was to cross someone else's land?

26 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
27 the fear and anxiety and potential foreseeable risks and negative impacts that this
28 type of a project carrying this type of product brings foisted upon anyone in this
29 state or any other state.

1 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
2 **Pipeline to cross the state of Nebraska?**

3 A: I don't believe there is an intelligent route because as I have stated **I don't believe**
4 **this project anywhere within Nebraska is within the public interest.** However, if
5 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
6 had to go somewhere in the state of Nebraska, the only intelligent route I believe
7 would be to twin or closely parallel the existing Keystone I Pipeline. **Both the**
8 **preferred route and the mainline alternative routes are economic liabilities our**
9 **state cannot risk.**

10 **Q: What do you rely upon to make that statement?**

11 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
12 already exists in that area is reason enough as it is not in our best interest or the
13 public interests to have more major oil pipelines crisscrossing our state. Second,
14 they have all the infrastructure already there in terms of relationships with the
15 counties and local officials and first responders along that route. Third, they have
16 already obtained easements from all the landowners along that route and have
17 relationships with them. Fourth, that route avoids our most sensitive soils, the
18 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
19 Aquifer. Sixth, they have already studied that route and previously offered it as an
20 alternative. Seventh, it just makes the most sense that as a state we would have
21 some intelligent policy of energy corridors and co-locating this type of
22 infrastructure near each other.

23 **Q: Do you have any other concerns or comments you would like to reiterate or**
24 **can think of at this time you would like the Commissioners to understand?**

25 A: Yes. Two years ago they legally abandoned the filed eminent domain proceedings,
26 after President Obama denied the border crossing permit. Two years now we have
27 been in litigation to recover expenses granted by Nebraska State law. TransCanada
28 has done nothing but drag out not living up to their obligation. TransCanada is not,

1 and has proven time after time that they are bad actors and will never be a good
2 neighbor for Nebraska's landowner.

3 **Q: What else?**

4 **A: INADEQUATE SITING INVESTIGATION** - The company TransCanada hired to
5 devise the alternate route map was seriously deficient in their selection. In my
6 Federal Government days, we would have called this a "pencil whipped" product.
7 They drew a line on the map that, to them, looked to be the least populated and
8 most direct route for their client. Their proposed route took them directly through
9 a neighbor's house. When informed of my brother's and our two houses and 5
10 domestic wells, TransCanada's maps did not show our residences, nor wells. Their
11 proposal, "Authorize us to survey your property and we will talk about it!"

12 **Q: What else concerns you?**

13 **A: UNSTABLE GROUND ON THE ROUTE** - Their proposed route crosses many
14 hills and ridges on the north drainage for the Keya Paha River. These hills and
15 ridges are composed of rotted shale over a hard shale pan. TransCanada
16 representatives were notified of, and ignored, this landowner input. Within one
17 mile of the route across our land are 8 different ridges. Of these 8, 5 have visible
18 evidence of past or recent slides comprising hundreds of square yards of moved
19 earth. Fear of the same thing that happened in North Dakota is real as a slide broke
20 the pipeline there and contaminated the Little Missouri River. Below is an excerpt
21 from the Bismark Tribune:

22 **BISMARCK TRIBUNE March 31, 2017**

23 **BELFIELD, N.D. –** The Belle Fourche Pipeline system that contaminated a
24 tributary of the Little Missouri River is in a landslide-prone area and vulnerable to
25 future spills, federal pipeline regulators say. A document from the Pipeline and
26 Hazardous Materials Safety Administration shows that regulators believe the
27 pipeline company may have experienced other spills in southwest North Dakota
28 that went undetected due to inadequate leak detection monitoring and unstable
29 terrain. The agency issued a corrective action order to Belle Fourche Pipeline Co.,

part of True Companies of Wyoming, following the spill discovered Dec. 5 by a landowner northwest of Belfield. The spill, now estimated at 529,830 gallons, three times larger than an earlier estimate and one of the most significant in North Dakota history, contaminated about 5 miles of Ash Coulee Creek, which flows into the Little Missouri River. The cause of the spill is under investigation, but the company points to the slumping of a hillside in the rugged Badlands terrain where the pipeline break occurred."

Q: What else concerns you?

A: REDUCED LAND VALUE - When land comes up for sale in our area, one of the first questions asked of the realtors is whether the land is on the pipeline route. Bidders are making their decisions based on if the land carries the pipeline risk. Fewer bidders lower the value of the land sales.

Q: What else concerns you?

A: ENDANGERED SPECIES - During meetings with TransCanada representatives, they were unaware of a long existing Bald Eagle nest directly on the route path. Since 2013 notification, winds blew down the original nest tree. The eagles moved a short distance and built another nest. This nest is still within the buffer exclusion zone identified in the 2014 FSEIS sections on migratory and Bald and Golden Eagles. The adult eagles use a sentry/guard tree where they sit to protect the nest. This tree will be destroyed by the pipeline construction. American Burying beetles are also present on our land.

Q: What else concerns you?

A: SINK HOLES - For unknown reasons, when land on our ranch is disturbed, large sink holes randomly appear. These sink holes happen suddenly and can be 20 feet across and over 5 feet deep! The pipeline is land disturbing, and these sink holes are a possibility that will break the pipeline.

Q: What else concerns you?

A: NATIVE AMERICAN SACRED SITES - Two different, pre-1900 Native American encampment sites, probable burial grounds, and sacred prayer sites have

1 been identified by Ponca TIPO representatives. They are either directly on the
2 pipeline route and/or within yards of the pipeline route.

3 **Q: What else concerns you?**

4 A: INCOME IMPACT - Our land footprint is a north/south oriented rectangle. The
5 proposed route bisects our land from the northwest corner to the southeast corner.
6 Half of our land will be on one side and half on the other side. The route will
7 destroy our only heavy equipment crossing on Alkali Creek. Cattle in the pastures
8 will be unable to get to the water tank and shade trees. We will be unable to reach
9 tilled fields for crop production. The pipeline will impede access to valuable hay
10 fields needed to produce winter feed for the cattle. The pipeline will traverse up
11 slope of 5 potable water wells on our ranch. A leak into the river bottom land,
12 where these wells are located, will permeate the deposited fine sands and destroy
13 our only water source.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 A: No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: Does Attachment No. 8 here contain other documents you are competent to**
2 **speak about that you wish to be part of your testimony and to discuss in more**
3 **detail as needed at the August 2017 Hearing?**

4 A: Yes. I have included pictures of hills within one mile of the proposed route that
5 have slid/slumped. I have pictures of different hills that have done this. I also have
6 pictures of the eagle's nest, an adult eagle in a "guard tree" that will be removed by
7 TC and pictures of large sink holes that occur on our land when the soil is
8 disturbed.

9 **Q: What is it that you are requesting the Public Service Commissioners do in**
10 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
11 **across Nebraska?**

12 A: I am respectfully and humbly requesting that the Commissioners think far beyond
13 a temporary job spike that this project may bring to a few counties and beyond the
14 relatively small amount of taxes this proposed foreign pipeline would possibly
15 generate. And, instead think about the perpetual and forever impacts of this
16 pipeline as it would have on the landowners specifically, first and foremost, but
17 also thereby upon the entire state of Nebraska, and to determine that neither the
18 preferred route nor the Keystone mainline alternative route are in the public
19 interest of the citizens of the state of Nebraska. And if the Commissioners were
20 inclined to modify TransCanada's proposed routes and were to be inclined to grant
21 an application for a route in Nebraska, that the only potential route that would
22 make any intelligent sense whatsoever would be twinning or near paralleling of
23 the proposed KXL with the existing Keystone I pipeline. It simply does not make
24 sense to add yet another major oil pipeline crisscrossing our state creating new
25 pumping stations, creating new impacts on additional counties and communities
26 and going through all of the court processes with myself and other landowners like
27 me when this applicant already has relationships with the landowners, the towns
28 and the communities along Keystone I, and that Keystone I is firmly outside of the

1 sand hills and a significantly further portion away from the heart of the Ogallala

2 Aquifer than the preferred route or the Keystone mainline alternative route.

3 **Q: Are all of your statements in your testimony provided above true and**
4 **accurate as of the date you signed this document to the best of your**
5 **knowledge?**

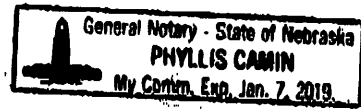
6 **A: Yes, they are.**

7 **Q: Thank you, I have no further questions at this time and reserve the right to**
8 **ask you additional questions at the August 2017 Hearing.**


Bob Allpress, Allpress Brothers, LLC

Subscribed and Sworn to me before this 24th day of May, 2017.


Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Robert Bartels in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Saline County)

1 **Q: Please state your name.**

2 A: My name is Robert Bartels.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Saline County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

EXHIBIT

2

exhibitsticker.com

1 A: Yes.

2 **Q: Do you earn any income from this land?**

3 A: Yes.

4 **Q: Have you depended on the income from your land to support your livelihood**
5 **or the livelihood of your family?**

6 A: Yes.

7 **Q: Have you ever in the past or have you thought about in the future leasing all**
8 **or a portion of your land in question here?**

9 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
10 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
11 all the restrictions and risks and potential negative impacts to farming or ranching
12 operations as opposed to land that did not have those same risks. If I was looking
13 to lease or rent ground I would pay more for comparable non-pipeline land than I
14 would for comparable pipeline land and I think most folks would think the same
15 way. This is another negative economic impact that affects the landowner and the
16 county and the state and will forever and ever should TransCanada's preferred or
17 mainline alternative routes be approved. If they were to twin or closely parallel to
18 Keystone I the vast majority of landowners would be those that already have a
19 pipeline so there would be considerable less new incremental negative impacts.

20 **Q: Do you have similar concerns about selling the land?**

21 A: Well I hope not to have to sell the land in my lifetime but times change and you
22 never know what is around the corner and yes I am concerned that if another piece
23 of ground similar to mine were for sale and it did not have the pipeline and mine
24 did that I would have a lower selling price. I think this would be true for pipeline
25 ground on both the preferred and mainline alternative routes.

26 **Q: What is your intent with your land after you die?**

27 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
28 to come but I have thought about getting out if this pipeline were to come through.

1 Q: Are you aware that the preferred route of TransCanada's Keystone XL
2 Pipeline would cross the land described above and owned by you?

3 A: Yes.

4 Q: Were you or an entity for which you are a member, shareholder, or director
5 previously sued by TransCanada Keystone Pipeline, LP?

6 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
7 petition for condemnation against our land so it could place its proposed pipeline
8 within an easement that it wanted to take from us on our land.

9 Q: Did you defend yourself and your land in that condemnation action?

10 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
11 and expenses in our resistance of TransCanada's lawsuit against us.

12 Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
13 incurred?

14 A: No, they have not.

15 Q: In its lawsuit against you, did TransCanada identify the amount of your
16 property that it wanted to take for its proposed pipeline?

17 A: The lawsuit against us stated they would take the amount of property that is
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
19 and equipment reasonably necessary to operate the pipeline.

20 Q: Did TransCanada define what they meant by "property that is reasonably
21 necessary"?

22 A: No, they did not.

23 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
24 property portion of your land?

25 A: Yes, they did.

26 Q: Did TransCanada describe what rights it proposed to take related to the
27 eminent domain property on your land?

28 A: Yes, they did.

29 Q: What rights that they proposed to take did they describe?

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
2 operate, and maintain the pipeline and the plant and equipment reasonably
3 necessary to operate the pipeline, specifically including surveying, laying,
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
5 reconstructing, removing and abandoning one pipeline, together with all fittings,
6 cathodic protection equipment, pipeline markers, and all their equipment and
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
8 petroleum products, and all by-products thereof.”

9 Q: Prior to filing an eminent domain lawsuit to take your land that
10 TransCanada identified, do you believe they attempted to negotiate in good
11 faith with you?

12 A: No, I do not.

13 Q: Did TransCanada at any time approach you with or deliver to you their
14 proposed easement and right-of-way agreement?

15 A: Yes, they did.

16 Q: At the time you reviewed TransCanada’s easement and right-of-way
17 agreement, did you understand that they would be purchasing a fee title
18 interest in your property or that they were taking something else?

19 A: I understood that they proposed to have the power to take both a temporary
20 construction easement that could last for a certain period of time and then also a
21 permanent easement which they described to be 50 feet across or in width, and
22 that would run the entire portion of my property from where a proposed pipeline
23 would enter my property until where it would exit the property.

24 Q: Is the document included with your testimony here as Attachment No. 3, a
25 true and accurate copy of TransCanada’s proposed Easement and Right-of-
26 Way agreement that they included with their condemnation lawsuit against
27 you?

28 A: Yes, it is.

1 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
2 and Right-of-Way agreement?

3 **A:** Yes, I have.

4 **Q:** What is your understanding of the significance of the Easement and Right-of-
5 Way agreement as proposed by TransCanada?

6 **A:** My understanding is that this is the document that will govern all of the rights and
7 obligations and duties as well as the limitations of what I can and cannot do and
8 how I and any future landowner and any person I invite to come onto my property
9 must behave as well as what TransCanada is and is not responsible for and how
10 they can use my land.

11 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
12 agreement do you have any concerns about any portions of it or any of the
13 language either included in the document or missing from the proposed
14 document?

15 **A:** Yes, I have a number of significant concerns and worries about the document and
16 how the language included and the language not included potentially negatively
17 impacts my land and thereby potentially negatively impacts my community and
18 my state.

19 **Q:** I would like you to walk the Commissioners through each and every one of
20 your concerns about TransCanada's proposed Easement and Right-of-Way
21 agreement so they can develop an understanding of how that language and
22 the terms of that contract, in your opinion, potentially negatively impacts you
23 and your land. So, if you can start at the beginning of that document and
24 let's work our way through it, okay?

25 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
26 Easement and Right-of-Way agreement and how it negatively could affect my
27 property rights and my economic interests.

28 **Q:** Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
6 percent clear on exactly who could become the owner of over 275 miles of
7 Nebraska land?

8 **A:** No.

9 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
10 percent clear on exactly who will be operating and responsible for
11 approximately 275 miles of tar sands pipeline underneath and through
12 Nebraska land?

13 **A:** No.

14 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
15 and the State of Nebraska of TransCanada's easement terms.

16 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q:** Do you think that type of uncertainty and lack of control over a major piece
26 of infrastructure crossing our State is in the public interest?

27 **A:** No, certainly not, in fact, just the opposite.

28 **Q:** What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 A: No, they have not.

5 Q: Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 A: No, they have not.

9 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 A: Yes, I am.

12 Q: What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 Q: Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 A: No, they have not.

21 Q: Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 **A:** No, it has not.

7 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q:** **Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q:** **Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q:** **Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

1 **Q:** Do you believe the fact that you pay property taxes on your land would be
2 enough to qualify you to have the power of eminent domain to take land of
3 your neighbors or other people in your county, or other people across the
4 state of Nebraska?

5 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q:** Have you at any time ever employed any person other than yourself?

8 **A:** Well, yes I have.

9 **Q:** Do you believe that the fact that you have, at some point in your life,
10 employed one or more other persons entitle you to any special treatment or
11 consideration above and beyond any other Nebraskan that has also employed
12 one or more persons?

13 **A:** No, of course not.

14 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
15 have at one point employed another person within this state, entitles you to
16 preferential treatment or consideration of any kind?

17 **A:** No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q:** At the beginning of your statement, you briefly described your property that
20 would be impacted by the potential Keystone XL Pipeline. I would like you to
21 give the Commissioners a sense of specifically how you believe the proposed
22 Keystone XL Pipeline and its preferred route, which proposes to go across
23 your land, how it would in your opinion based on your knowledge,
24 experience, and background of your land, affect it. So please share with the
25 Commissioners the characteristics of your land that you believe is important
26 for them to understand, while they evaluate TransCanada's application for a
27 route for its proposed pipeline to cross Nebraska and across your land,
28 specifically.

1 A: 1. Will we, as the land owner, be responsible for leaks of pipes in the future. XL
2 has not given a "yes" or "no" answer on this matter.

3 2. Resale of the land is less because of the pipeline through it.

4 3. Who pays the taxes on the easement land?

5 4. The designated route of the pipeline comes within 600-700 ft, of the well of
6 water used for human consumption on the family farm, located at 562 St Hwy. 74,
7 Tobias, NE.

8 5. What happens if XL abandons the pipeline? Who is ultimately responsible for
9 the removal of the pipeline?

10 6. Lack of trust with XL Pipeline after talking with them. We have concerns with
11 threats being used to coerce landowners into selling. Why does it have to decrease
12 in value according to the date XL takes control of the property? We also did not
13 appreciate the pressure to sell to XL that was put on Dorothy Bartels after her
14 husband's death.

15 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
16 **crude oil pipeline in its preferred location, or ultimate location across the**
17 **state of Nebraska?**

18 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
19 or even bullied around and being made to feel scared that they did not have any
20 options but to sign whatever papers TransCanada told them they had to. I am
21 aware of folks being threatened that their land would be taken if they didn't follow
22 what TransCanada was saying. I am aware of tactics to get people to sign
23 easements that I don't believe have any place in Nebraska or anywhere such as
24 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
25 landowners and convince them they should sign TransCanada's easement
26 agreements. I am aware of older folks and widows or widowers feeling they had
27 no choice but to sign TransCanada's Easement and they didn't know they could
28 fight or stand up for themselves. From a more practical standpoint, I am worried
29 that according to their answer to our Interrogatory No. 211, TransCanada only

owns and operates one (1) major oil pipeline. They simply do not have the experience with this type of pipeline and that scares me. There are others but that is what I can recollect at this time and if I remember more or my recollection is refreshed I will share those with the Commissioners at the Hearing in August.

Q: Do you believe TransCanada's proposed method of compensation to you as a landowner is reasonable or just?

A: No, I do not.

Q: Do you have any concern about limitations that the construction of this proposed pipeline across your affected land would prevent construction of future structures upon the portion of your land affected by the proposed easement and immediately surrounding areas?

A: Well yes, of course I do. We would not be able to build many, if any, types of structures directly across or touching the easement, and it would be unwise and I would be uncomfortable to build anything near the easement for fear of being blamed in the future should any damage or difficulty result on my property in regards to the pipeline.

Q: Do you think such a restriction would impact you economically?

A: Well yes, of course.

Q: How do you think such a restriction would impact you economically?

A: The future of this land may not be exactly how it's being used as of this moment, and having the restrictions and limiting my ability to develop my land in certain ways presents a huge negative economic impact on myself, my family, and any potential future owner of the property. You have no idea how I or the future owner may want to use this land in the future or the other land across Nebraska potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years ago it would have been hard to imagine all the advances that we have now or how things change. Because the Easement is forever and TransCanada gets the rights in my land forever we have to think with a very long term view. By placing their pipeline on under across and through my land that prevents future development

1 which greatly negatively impacts future taxes and tax revenue that could have
2 been generated by the County and State but now will not. When you look at the
3 short blip of economic activity that the two years of temporary construction efforts
4 may bring, that is far outweighed by the perpetual and forever loss of opportunity
5 and restrictions TransCanada is forcing upon us and Nebraska.

6 **Q: Do you have any concerns about the environmental impact of the proposed**
7 **pipeline?**

8 A: Yes, I do.

9 **Q: What are some of those concerns?**

10 A: As an affected land owner and Nebraskan, I am concerned that any construction,
11 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
12 a detrimental impact upon the environment of my land specifically, as well as the
13 lands near my land and surrounding the proposed pipeline route.

14 **Q: Do you have any other environmental concerns?**

15 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
16 construction and/or maintenance and operation. I am concerned about spills and
17 leaks that TransCanada has had in the past and will have in the future. This could
18 be catastrophic to my operations or others and to my county and the State.

19 **Q: Do you have any thoughts regarding if there would be an impact upon the**
20 **natural resources on or near your property due to the proposed pipeline?**

21 A: Yes, I believe that any construction, operation, and/or maintenance of the
22 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
23 resources of my land, and the lands near and surrounding the proposed pipeline
24 route.

25 **Q: Do you have any worries about potential impacts from the proposed pipeline**
26 **to the soil of your land, or land near you?**

27 A: Yes, I believe that any construction, operation, and/or maintenance of the
28 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
29 land, as well as land along and surrounding the proposed pipeline route. This

1 includes, but is not limited to, the reasons that we discussed above of disturbing
2 the soil composition and makeup as it has naturally existed for thousands and
3 millions of years during the construction process, and any future maintenance or
4 removal process. I'm gravely concerned about the fertility and the loss of
5 economic ability of my property to grow the crops, or grow the grasses, or grow
6 whatever it is at that time they exist on my property or that I may want to grow in
7 the future, or that a future owner may want to grow. The land will never be the
8 same from as it exists now undisturbed to after it is trenched up for the proposed
9 pipeline.

10 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
11 **upon the groundwater over your land, or surrounding lands?**

12 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
13 the proposed Keystone XL Pipeline would have a detrimental impact upon the
14 groundwater of not only under my land, but also near and surrounding the pipeline
15 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
16 simple and it is simply too valuable to our State and the country to put at
17 unreasonable risk.

18 **Q: Do you have any concern about the potential impact of the proposed pipeline**
19 **upon the surface water on, or near or around your land?**

20 A: Yes, I have significant concerns that any construction, operation, and/or
21 maintenance of the proposed Keystone XL Pipeline would have detrimental
22 impact upon the surface water of not only within my property boundary, but along
23 and near and surrounding the pipeline route, and in fact, across the state of
24 Nebraska.

25 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
26 **upon the wildlife and plants, other than your growing crops on or near your**
27 **land?**

28 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
29 the proposed Keystone XL Pipeline would have a detrimental impact upon the

wildlife and the plants, not only that are located on or can be found upon my land, but also near and along the proposed pipeline route.

Q: Do you have any concerns about the effects of the proposed pipeline upon the fair market value of your land?

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the fair market value at any point in the future, especially at that point in which I would need to sell the property, or someone in my family would need to sell the property. I do not believe, and certainly would not be willing to pay, the same price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 6, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

1 **Q:** Do you believe that TransCanada's preferred route as found on page 5 of its
2 Application, and as found on Attachment No. 7, here to your testimony, is in
3 the public interest of Nebraska?

4 **A:** No, I do not.

5 **Q:** Do you believe that the Keystone mainline alternative route as shown on
6 Attachment No. 7 included with your testimony here is a major oil pipeline
7 route that is in the public interest of Nebraska?

8 **A:** No, I do not.

9 **Q:** Do you believe the portion of the proposed pipeline within Nebraska as found
10 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

11 **A:** No, I do not.

12 **Q:** Do you believe there is any potential route for the proposed Keystone XL
13 Pipeline across, within, under, or through the State of Nebraska that is in the
14 public interest of the citizens of Nebraska?

15 **A:** No, I do not.

16 **Q:** Why do you hold that belief?

17 **A:** Because there simply is no public interest based on all of the factors that I am
18 aware and that I have read and that I have studied that this Commission is to
19 consider that would establish that a for-profit foreign-owned pipeline that simply
20 crosses Nebraska because we are geographically in the way between where tar
21 sands are in Canada to where it wants to ship it to in Texas could ever be in the
22 public interest of Nebraskans. We derive no benefit from this project. It is not for
23 public use. Nebraska is simply in the way and when all considerations are taken in
24 there is no net benefit of any kind for Nebraska should this project be placed in our
25 state. Even if there was some arguable "benefit" it is not enough to outweigh all
26 the negative impacts and concerns.

27 **Q:** What do you think about the applicant, TransCanada's argument that it's
28 preferred route for its proposed Keystone XL Pipeline is in the public interest

1 of Nebraska because it may bring temporary jobs during the construction
2 phase to Nebraska?

3 A: First of all, not all jobs are created equally. Most jobs that are created, whether
4 temporary or on a permanent basis, don't come with a project that has all the
5 potential and foreseeable negative impacts, many of which we have discussed here
6 and other witnesses throughout the course of this hearing have and will discuss. If
7 I decide to hire and employ someone to help me out in my farming or ranching
8 business, I've created a job but I haven't done so at the risk or detrimental impact
9 to my land or my town or my county or my state. And I've hired someone who is
10 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
11 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
12 jobs are not created equal. Additionally, I understand from what I'm familiar with
13 from TransCanada's own statements that the jobs numbers they originally touted
14 were determined to be a minute fraction of the permanent jobs that had been
15 projected. According to their answer to our Interrogatory No. 191, TransCanada
16 has created only thirty-four (34) jobs within Nebraska working specifically on
17 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
18 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
19 Further, according to their answer to Interrogatory No. 199, TransCanada would
20 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
21 constructed on its Preferred Route or its Mainline Alternative Route.

22 Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply
23 because it would cross your land?

24 A: No, absolutely not. I am opposed to this project because it is not in the public
25 interest, neither within my community nor within our state.

26 Q: Would you be happier if instead of crossing your land, this proposed pipeline
27 was to cross someone else's land?

28 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
29 the fear and anxiety and potential foreseeable risks and negative impacts that this

1 type of a project carrying this type of product brings foisted upon anyone in this
2 state or any other state.

3 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
4 **Pipeline to cross the state of Nebraska?**

5 A: I don't believe there is an intelligent route because as I have stated I don't believe
6 this project anywhere within Nebraska is within the public interest. However, if
7 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
8 had to go somewhere in the state of Nebraska, the only intelligent route I believe
9 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
10 preferred route and the mainline alternative routes are economic liabilities our
11 state cannot risk.

12 **Q: What do you rely upon to make that statement?**

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners along that route and have
19 relationships with them. Fourth, that route avoids our most sensitive soils, the
20 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
21 Aquifer. Sixth, they have already studied that route and previously offered it as an
22 alternative. Seventh, it just makes the most sense that as a state we would have
23 some intelligent policy of energy corridors and co-locating this type of
24 infrastructure near each other.

25 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
26 **like the Public Service Commissioners to consider in their review of**
27 **TransCanada's Application?**

28 A: No, I have not. I have shared that which I can think of as of the date I signed this
29 document below but other things may come to me or my memory may be

1 refreshed and I will add and address those things at the time of the Hearing in
2 August and address any additional items at that time as is necessary. Additionally,
3 I have not had an adequate amount of time to receive and review all of
4 TransCanada's answers to our discovery and the discovery of others so it was
5 impossible to competently and completely react to that in my testimony here and I
6 reserve the right to also address anything related to discovery that has not yet
7 concluded as of the date I signed this document below. Lastly, certain documents
8 requested have not yet been produced by TransCanada and therefore I may have
9 additional thoughts on those I will also share at the hearing as needed.

10 **Q: What is it that you are requesting the Public Service Commissioners do in**
11 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
12 **across Nebraska?**

13 A: I am respectfully and humbly requesting that the Commissioners think far beyond
14 a temporary job spike that this project may bring to a few counties and beyond the
15 relatively small amount of taxes this proposed foreign pipeline would possibly
16 generate. And, instead think about the perpetual and forever impacts of this
17 pipeline as it would have on the landowners specifically, first and foremost, but
18 also thereby upon the entire state of Nebraska, and to determine that neither the
19 preferred route nor the Keystone mainline alternative route are in the public
20 interest of the citizens of the state of Nebraska. And if the Commissioners were
21 inclined to modify TransCanada's proposed routes and were to be inclined to grant
22 an application for a route in Nebraska, that the only potential route that would
23 make any intelligent sense whatsoever would be twinning or near paralleling of
24 the proposed KXL with the existing Keystone I pipeline. It simply does not make
25 sense to add yet another major oil pipeline crisscrossing our state creating new
26 pumping stations, creating new impacts on additional counties and communities
27 and going through all of the court processes with myself and other landowners like
28 me when this applicant already has relationships with the landowners, the towns
29 and the communities along Keystone I, and that Keystone I is firmly outside of the

1 sand hills and a significantly further portion away from the heart of the Ogallala

2 Aquifer than the preferred route or the Keystone mainline alternative route.

3 **Q: Are all of your statements in your testimony provided above true and**
4 **accurate as of the date you signed this document to the best of your**
5 **knowledge?**

6 **A: Yes, they are.**

7 **Q: Thank you, I have no further questions at this time and reserve the right to**
8 **ask you additional questions at the August 2017 Hearing.**

Robert Bartels

Robert Bartels

Subscribed and Sworn to me before this 2nd day of June, 2017.

Betty S. Nickel

Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Mia Bergman in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Mia Bergman.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question?**

13 A: Yes.

14 **Q: What do you do for a living?**

15 A: Farmer and R.N.

EXHIBIT

3

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1 **Q:** **Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q:** **Do you earn any income from this land?**

5 A: Yes.

6 **Q:** **Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q:** **Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q:** **Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q:** **What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Have you reviewed the Easement and Right-of-Way Agreement TransCanada**
7 **holds against your land?**

8 A: Yes.

9 **Q: Did TransCanada describe what rights it has taken related to their Easement**
10 **and Right-of-Way on your land?**

11 A: Yes, they did.

12 **Q: What rights did they take?**

13 A: TransCanada stated that the Easement and Right-of-Way will be used to "lay,
14 relay, operate, and maintain the pipeline and the plant and equipment reasonably
15 necessary to operate the pipeline, specifically including surveying, laying,
16 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
17 reconstructing, removing and abandoning one pipeline, together with all fittings,
18 cathodic protection equipment, pipeline markers, and all their equipment and
19 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
20 petroleum products, and all by-products thereof."

21 **Q: Did you ever have an opportunity to negotiate any of the Easement and**
22 **Right-of-Way language or terms?**

23 A: No, I did not.

24 **Q: At the time you reviewed TransCanada's easement and right-of-way**
25 **agreement, did you understand that they purchased a fee title interest in your**
26 **property or that they took something else?**

27 A: I understood that they have the power to take both a temporary construction
28 easement that could last for a certain period of time and then also a permanent
29 easement which they described to be 50 feet across or in width, and that would run

1 through portion of my property from where a proposed pipeline would enter my
2 property until where it would exit the property.

3 **Q: Is the document included with your testimony here as Attachment No. 3, a**
4 **true and accurate copy of TransCanada's Easement and Right-of-Way**
5 **agreement that affects your property?**

6 **A:** Yes, it is.

7 **Q: Have you had an opportunity to review TransCanada's proposed Easement**
8 **and Right-of-Way agreement?**

9 **A:** Yes, I have.

10 **Q: What is your understanding of the significance of the Easement and Right-of-**
11 **Way agreement as proposed by TransCanada?**

12 **A:** My understanding is that this is the document governs all of the rights and
13 obligations and duties as well as the limitations of what I can and cannot do and
14 how I and any future landowner and any person I invite to come onto my property
15 must behave as well as what TransCanada is and is not responsible for and how
16 they can use my land.

17 **Q: After reviewing TransCanada's Easement and Right-of-Way agreement do**
18 **you have any concerns about any portions of it or any of the language either**
19 **included in the document or missing from the proposed document?**

20 **A:** Yes, I have a number of significant concerns and worries about the document and
21 how the language included and the language not included potentially negatively
22 impacts my land and thereby potentially negatively impacts my community and
23 my state.

24 **Q: I would like you to walk the Commissioners through each and every one of**
25 **your concerns about TransCanada's proposed Easement and Right-of-Way**
26 **agreement so they can develop an understanding of how that language and**
27 **the terms of that contract, in your opinion, negatively impacts you and your**
28 **land. So, if you can start at the beginning of that document and let's work**
29 **our way through it, okay?**

1 A: Yes, I'll be happy to express my concerns about TransCanada's Easement and
2 Right-of-Way agreement and how it negatively could affect my property rights
3 and my economic interests.

4 Q: **Okay, let's start with your first concern please.**

5 A: The very first sentence talks about consideration or how much money they will
6 pay to compensate for all of the known and unknown affects and all of the rights
7 that are being given up and for all the things they get to do to the land and for what
8 they will prevent me from doing on my land. The problem is they paid the
9 previous owner one time and I have never received any payment. But even if I had
10 received the one-time payment, why should a private, foreign company be allowed
11 to use my land as they see fit? There is no public gain with this project. There
12 isn't even any gain for landowners whose land this pipe will be crossing. A one-
13 time payment isn't just or fair compensation for the burden placed upon us and our
14 State. Where are our rights as landowners who bought and paid for our land with
15 our hard work? We are the ones that are stuck with all the risk. We may only
16 receive compensation for the crop loss during the construction of the pipeline; and
17 who gets to determine what is fair compensation for this? TransCanada? Will they
18 use our average proven yield to determine what fair compensation is? Will they
19 use the lowest price of grain at that time? We wouldn't sell our grain for the
20 lowest price. We would hold on to it and watch the markets to sell for the highest
21 price. And if this ends up being the case, do we take them to court and acquire
22 legal expenses to fight for the money that should rightfully be ours? What happens
23 if this affects our yield enough that our average proven yield is affected and thus
24 also affects any possible crop insurance pay-out if we were to have inclement
25 weather that affected our yield for any of the fields that we farm.

26 Q: **Explain to the Commissioners why that is a problem.**

27 A: It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada's shareholders
10 keep that money. Nebraska's main economy is agriculture. Why should our main
11 economic interests be jeopardized for a foreign company with minimal, if any,
12 benefit to Nebraska or the Country?

13 **Q: What is your next concern?**

14 **A:** The first paragraph goes on to say Grantor, which is me the landowner, “does
15 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
16 limited partnership...” and I have no idea who that really is. I have no idea who is
17 forcing this pipeline on us or who the owners of the entities are, or what are the
18 assets backing this limited partnership, or who the general partner is, or who all
19 the limited partners are, and who makes up the ownership of the these partners or
20 the structure or any of the basic things you would want to know and understand if
21 you would want to do business with such an outfit. According to TransCanada's
22 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
23 liability company called TransCanada Keystone Pipeline GP, LLC is the general
24 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
25 basically nothing. That is really scary since the general partner has the liability but
26 virtually none of the ownership and who knows if it has any other assets.

27 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
28 **percent clear on exactly who could become the owner of about 275 miles of**
29 **Nebraska land?**

1 A: No.

2 Q: Do you think it is in the public interest of Nebraska to not be one-hundred
3 percent clear on exactly who will be operating and responsible for
4 approximately 275 miles of tar sands pipeline underneath and through
5 Nebraska land?

6 A: No.

7 Q: Okay, let's continue please with your concerns of the impacts upon your land
8 and the State of Nebraska of TransCanada's easement terms.

9 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
10 called "Grantee")..." and this concerns me because it would allow the easement to
11 be transferred or sold to someone or some company or country or who knows what
12 that I don't know and who we may not want to do business with. This pipeline
13 would be a huge asset for TransCanada and if they can sell to the highest bidder
14 that could have terrible impacts upon all of Nebraska depending upon who may
15 buy it and I don't know of any safeguards in place for us or the State to veto or
16 have any say so in who may own, operate, or be responsible for this pipeline in the
17 future.

18 Q: Do you think that type of uncertainty and lack of control over a major piece
19 of infrastructure crossing our State is in the public interest?

20 A: No, certainly not, in fact, just the opposite.

21 Q: What's next?

22 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
23 really concerns me. Why does the easement and right-of-way have to be perpetual
24 and permanent? That is the question myself and my family want an answer to.
25 Perpetual to me is forever and that doesn't make sense.

26 Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?

27 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
28 data proving there is a perpetual supply of tar sands. I am not aware in
29 TransCanada's application where it proves there is a perpetual necessity for this

1 pipeline. My understanding of energy infrastructure like wind towers is they have
2 a decommission plan and actually take the towers down when they become
3 obsolete or no longer needed. Nothing manmade lasts forever. My land however
4 will, and I want my family or future Nebraska families to have that land as
5 undisturbed as possible and it is not in my interest or the public interest of
6 Nebraska to be forced to give up perpetual and permanent rights in the land for
7 this specific kind of pipeline project.

8 **Q: Okay, what is your next concern?**

9 **A:** The easement language includes all these things TransCanada can do and it says
10 "...abandoning in place..." so they can just leave this pipeline under my ground
11 until the end of time just sitting there while they are not using it, but I am still
12 prevented from doing on my land and using my land what I would like. If I owned
13 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
14 there. It doesn't make sense and it scares me and it is not in my interest or the
15 public interest of Nebraska to allow this.

16 **Q: So now on the second page of the Easement what are your concerns?**

17 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
18 pipeline but has caveats that are undefined and ambiguous. The 24-month period
19 starts to run from the moment "actual pipeline installation activities" begin on
20 Landowners property. It appears that TransCanada would define this phrase as
21 needed. It would be wise to explain what types of TransCanada action constitutes
22 "installation activity" For instance, would the placement and storage of an
23 excavator or other equipment on or near the Easement property be an activity or
24 would earth have to be moved before the activity requirement is triggered. This
25 vague phrase is likely to lead to future disputes and litigation that is not in the best
26 interest of the welfare of Nebraska and would not protect property interests. The
27 24-months can also be extended in the case of "force majeure." My understanding
28 is that force majeure is often used to insulate a party to a contract when events
29 occur that are completely out of their control. In TransCanada's easement this is

1 expanded to include “without limitation...availability of labor and materials.”
2 Extending this language to labor and materials is problematic because these are
3 two variables that TransCanada does have some or significant control over and to
4 allow extension of the 24-month period over events not truly out of the control of
5 TransCanada and without further provision for compensation for the Landowner is
6 not conducive to protection of property rights.

7 **Q: Okay, what is your next concern?**

8 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
9 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
10 reasonable costs and expenses” will pay for damages caused but then limits
11 TransCanada’s liability to certain circumstances. There is no definition of
12 “commercially reasonable” and no stated right that the Landowner would get to
13 determine the amounts of cost or expense that is “commercially reasonable.”
14 TransCanada excepts out from their liability any damages that are caused by
15 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
16 Landowner. It is understandable that if the Landowner were to willfully and
17 intentionally cause damages to the pipeline that Landowner should be liable.
18 However, anything short of willful misconduct should be the liability of
19 TransCanada who is subjecting the pipeline on the Landowner and who is making
20 a daily profit from that pipeline. When evaluating the impact on property rights of
21 this provision, you must consider the potentially extremely expensive fight a
22 Landowner would have over this question of whether or not damage was an act of
23 negligence. Putting this kind of potential liability upon the Landowner is
24 incredibly problematic and is detrimental to the protection of property rights. I
25 don’t think this unilateral power which I can’t do anything about as the landowner
26 is in the best economic interest of the land in question or the State of Nebraska for
27 landowners to be treated that way.

28 **Q: Is there any specific event or example you are aware of that makes this**
29 **concern more real for you?**

1 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
2 Nemaha County, Nebraska landowner farmers who accidentally struck two
3 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
4 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
5 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
6 copy of the Federal Court Complaint is here as **Attachment No. 4**

7 **Q: What is your next concern with the Easement language?**

8 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
9 they choose unless 1) any Landowner use interferes in any way with
10 TransCanada's exercise of any of its rights within the Easement, or 2)
11 TransCanada decides to take any action on the property it deems necessary to
12 prevent injury, endangerment or interference with anything TransCanada deems
13 necessary to do on the property. Landowner is also forbidden from excavating
14 without prior authorization by TransCanada. So my understanding is that
15 TransCanada will unilaterally determine what Landowner can and can't do based
16 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
17 could also completely deny my request to excavate. Further, TransCanada retains
18 all "privileges necessary or convenient for the full use of the rights" granted to
19 them in the Easement. Again, TransCanada unilaterally can decide to the
20 detriment of the property rights of Landowner what TransCanada believes is
21 necessary or convenient for it. And there is no option for any additional
22 compensation to landowner for any right exercised by TransCanada that leads to
23 the removal of trees or plants or vegetation or buildings or structures or facilities
24 owned by Landowner of any kind. Such undefined and unilateral restrictions and
25 rights without having to compensate Landowner for such further destruction or
26 losses are not conducive to the protection of property rights or economic interest.

27 **Q: What is the next concern you have?**

28 A: The Easement also allows some rights for Landowner but restricts them at the
29 same time and again at the sole and unilateral decision making of TransCanada.

TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

1 A: There are more vague concepts solely at the determination of TransCanada such as
2 “as nearly as practicable” and “pre-construction position” and “extent reasonably
3 possible.” There is nothing here that defines this or provides a mechanism for
4 documenting or memorializing “pre-construction position” so as to minimize
5 costly legal battles or wasted Landowner time attempting to recreate the soil
6 condition on their fields or pasture. Such unilateral powers would negatively affect
7 Landowners property are not conducive to the protection of property rights or
8 economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: TransCanada maintains the unilateral right to abandon the pipeline and all
11 appurtenances thereto in place on, under, across, or through Nebraska land at any
12 time it chooses. There is no provision for Landowner compensation for such
13 abandonment nor any right for the Landowner to demand removal. Such unilateral
14 powers would negatively affect Landowners property are not conducive to the
15 protection of property rights or economic interest.

16 **Q: What is the next concern you have with the Easement language?**

17 A: TransCanada has the power to unilaterally move or modify the location of any
18 Easement area whether permanent or temporary at their sole discretion.
19 Regardless, if Landowner has taken prior steps relative the their property in
20 preparation or planning of TransCanada’s taking of the initial easement area(s),
21 the language here does not require TransCanada to compensate the Landowner if
22 they decide to move the easement anywhere on Landowners property. Such
23 unilateral powers would negatively affect Landowners property are not conducive
24 to the protection of property rights or economic interests.

25 **Q: What is the next concern you have with the Easement language?**

26 A: The Easement requires that all of the burdens and restrictions upon Landowner to
27 transfer and be applicable to any future owner of the Land in question without the
28 ability of the future Landowner to modify or negotiation any of the language in
29 question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at any time to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"

- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be. Worse yet, I am stuck with these now and I had no say so in this Easement language at all and no way to renegotiate or fight for what protections to my property rights and economic interests. This is wrong.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

1 A: No, I do not believe those terms to be reasonable or just for the reasons that we
2 discussed previously.

3 Q: As the owner of the land in question and as the person who knows it better
4 than anyone else, do you believe that TransCanada offered you just, or fair,
5 compensation for all of what they proposed to take from you so that their tar
6 sands pipeline could be located across your property?

7 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
8 offer for all the potential impacts and effects and the rights that I'm giving up, and
9 what we will be prevented from doing in the future and how their pipeline would
10 impact my property for ever and ever.

11 Q: Has TransCanada at any time offered to compensate you annually, such as
12 wind farm projects do, for the existence of their potential tar sands pipeline
13 across your property.

14 A: No, never.

15 Q: Has TransCanada ever contacted you and specifically asked you if you
16 thought their proposed location of their proposed pipeline across your land
17 was in your best interest?

18 A: No, they have not.

19 Q: Has TransCanada ever contacted you and specifically asked you if you
20 thought their proposed location of their proposed pipeline across your land
21 was in the public interest of the State of Nebraska?

22 A: No, they have not.

23 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
24 Takings Clause?

25 A: Yes, I am.

26 Q: What is your understanding of the Fifth Amendment as it relates to taking of
27 an American citizens property?

28 A: My understanding is that, according to the United States Constitution, that if the
29 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or
2 fairly.

3 **Q: Has TransCanada ever contacted you specially to explain the way in which**
4 **the public could use its proposed Keystone XL Pipeline?**

5 **A:** No, they have not.

6 **Q: Can you think of any way in which the public, that is the citizens of the State**
7 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
8 **Pipeline, as it dissects the State of Nebraska?**

9 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
10 public benefits from this pipeline in any way, how they can use it any way, or how
11 it's in the public interest in any way. By looking at the map, it is quite clear to me
12 that the only reason it's proposed to come through Nebraska, is that because we
13 are geographically in the way from between where the privately-owned Tar Sands
14 are located to where TransCanada wants to ship the Tar Sands to refineries in
15 Houston, Texas.

16 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
17 **crude petroleum, or oil and petroleum by-products that you would like to**
18 **ship in its pipeline?**

19 **A:** No, it has not.

20 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
21 **products that you, at this time or any time in the future, would desire to place**
22 **for transport within the proposed TransCanada Keystone XL Pipeline?**

23 **A:** No, I do not.

24 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
25 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
26 **products within the proposed TransCanada Keystone XL Pipeline?**

27 **A:** No, I do not. I've never heard of such a person or company like that.

28 **Q: Do you pay property taxes for the land that would be affected and impacted**
29 **at the proposed TransCanada Keystone XL Pipeline?**

1 A: Yes, I do.

2 **Q: Why do you pay property taxes on that land?**

3 A: Because that is the law. The law requires us to pay the property taxes as the owner
4 of that property.

5 **Q: Because you follow the law and pay property taxes, do you believe you**
6 **deserve any special consideration or treatment apart from any other person**
7 **or company that pays property taxes?**

8 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
9 just what you do.

10 **Q: Do you believe the fact that you pay property taxes entitles you to special**
11 **treatment of any kind, or special rights of any kind?**

12 A: No, of course not.

13 **Q: Do you believe the fact that you pay property taxes on your land would be**
14 **enough to qualify you to have the power of eminent domain to take land of**
15 **your neighbors or other people in your county, or other people across the**
16 **state of Nebraska?**

17 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
18 I expect an award for or any type of special consideration.

19 **Q: Have you at any time ever employed any person other than yourself?**

20 A: Well, yes I have.

21 **Q: Do you believe that the fact that you have, at some point in your life,**
22 **employed one or more other persons entitle you to any special treatment or**
23 **consideration above and beyond any other Nebraskan that has also employed**
24 **one or more persons?**

25 A: No, of course not.

26 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
27 **have at one point employed another person within this state, entitles you to**
28 **preferential treatment or consideration of any kind?**

1 A: No, of course not. If I choose to employ someone that decision is up to me. I
2 don't deserve any special treatment or consideration for that fact.

3 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
4 **crude oil pipeline in its preferred location, or ultimate location across the**
5 **state of Nebraska?**

6 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
7 or even bullied around and being made to feel scared that they did not have any
8 options but to sign whatever papers TransCanada told them they had to. I am
9 aware of folks being threatened that their land would be taken if they didn't follow
10 what TransCanada was saying. I am aware of tactics to get people to sign
11 easements that I don't believe have any place in Nebraska or anywhere such as
12 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
13 landowners and convince them they should sign TransCanada's easement
14 agreements. I am aware of older folks and widows or widowers feeling they had
15 no choice but to sign TransCanada's Easement and they didn't know they could
16 fight or stand up for themselves. From a more practical standpoint, I am worried
17 that according to their answer to Landowners Interrogatory No. 211, TransCanada
18 only owns and operates one (1) major oil pipeline. They simply do not have the
19 experience with this type of pipeline and that scares me. There are others but that
20 is what I can recollect at this time and if I remember more or my recollection is
21 refreshed I will share those with the Commissioners at the Hearing in August.

22 **Q: Do you believe TransCanada's method of compensation to the landowner is**
23 **reasonable or just?**

24 A: No, I do not.

25 **Q: Do you have any concern about limitations that the construction of this**
26 **proposed pipeline across your affected land would prevent construction of**
27 **future structures upon the portion of your land affected by the proposed**
28 **easement and immediately surrounding areas?**

1 A: Well yes, of course I do. We would not be able to build many, if any, types of
2 structures directly across or touching the easement, and it would be unwise and I
3 would be uncomfortable to build anything near the easement for fear of being
4 blamed in the future should any damage or difficulty result on my property in
5 regards to the pipeline.

6 **Q: Do you think such a restriction would impact you economically?**

7 A: Well yes, of course.

8 **Q: How do you think such a restriction would impact you economically?**

9 A: The future of this land may not be exactly how it's being used as of this moment,
10 and having the restrictions and limiting my ability to develop my land in certain
11 ways presents a huge negative economic impact on myself, my family, and any
12 potential future owner of the property. You have no idea how I or the future owner
13 may want to use this land in the future or the other land across Nebraska
14 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
15 ago it would have been hard to imagine all the advances that we have now or how
16 things change. Because the Easement is forever and TransCanada gets the rights in
17 my land forever we have to think with a very long term view. By placing their
18 pipeline on under across and through my land that prevents future development
19 which greatly negatively impacts future taxes and tax revenue that could have
20 been generated by the County and State but now will not. When you look at the
21 short blip of economic activity that the two years of temporary construction efforts
22 may bring, that is far outweighed by the perpetual and forever loss of opportunity
23 and restrictions TransCanada is forcing upon us and Nebraska.

24 **Q: Do you have any concerns about the environmental impact of the proposed**
25 **pipeline?**

26 A: Yes, I do.

27 **Q: What are some of those concerns?**

28 A: As an affected land owner and Nebraskan, I am concerned that any construction,
29 operation, and/or maintenance of the proposed Keystone XL Pipeline would have

1 a detrimental impact upon the environment of my land specifically, as well as the
2 lands near my land and surrounding the proposed pipeline route.

3 **Q: Do you have any other related environmental concerns?**

4 **A:** Yes, of course I am concerned about potential breaches of the pipeline, failures in
5 construction and/or maintenance and operation. I am concerned about spills and
6 leaks that TransCanada has had in the past and will have in the future. This could
7 be catastrophic to my operations or others and to my county and the State. Also, I
8 concerned about removal of topsoil with construction, the quality of the pipe being
9 used, and the quality of the leak monitoring system. What will be the effects on
10 the bodies of water and Ogallala Aquifer? How will they clean up a spill out of
11 water, when it has been stated that nobody knows how to effectively clean up a
12 spill of tar sands. This is evidenced by the spill in the Kalamazoo River. How
13 will a spill affect irrigating our crops? Will crops even grow with the chemicals in
14 the water? Is TransCanada responsible for our crop loss and/or decrease in yield
15 after a spill?

16 **Q: Okay, what else?**

17 **A:** I am an RN, and within the past year we had a water contamination issue in the
18 city that I work in. This greatly affected how we did patient care; we had to
19 change several things for a period of time to be able to take care of our patient's
20 properly. It also affected several businesses in town. Some had to shut down their
21 kitchens, soda machines, coffee machines due to concern about the water being
22 contaminated. This had to have resulted in a profit loss and extra expenses to
23 operate for these businesses. This could also cause job loss, unrelated to
24 agriculture. Will TransCanada pay for all costs of a spill or will they try to put that
25 on me or others like the are allowed to according to their one-sided Easement
26 language? Including expenses to neighboring landowners that might be affected?
27 What will be the effects on the ground? How will spills or leaks be detected?
28 Based on past experience we have learned they often aren't detected very quickly,
29 if at all, by TransCanada's monitoring system.

1 Will our grain even be marketable after a spill near our farm? Or will it be turned
2 down or receive less money due to possible contamination? How will my family
3 be able to live after a spill? What will we drink? How will we prepare food?
4 How will we bathe, wash clothes, wash dishes, grow a garden? So many things
5 we do on a daily basis revolve around water, how do we live once it is
6 contaminated? Is TransCanada responsible to make sure I have safe water and the
7 cost involved? How do we raise poultry and livestock with contaminated water?
8 How do we take care of our pets? Our lives are based around agriculture and
9 water is a necessity, how will we still be able to farm and support ourselves if we
10 aren't able to farm because of a spill. We will lose many ag related jobs, just to
11 gain a few permanent jobs this pipeline will create. What will the effects on
12 wildlife and plants be? Who will pay for the expenses to help protect and preserve
13 these species once they are in danger from a spill?

14 **Q: What else?**

15 **A:** A spill in the Ogallala Aquifer has the potential to affect SO many people's water
16 source. There are so many places around the world that don't have safe drinking
17 water. The people that live there suffer, and lack of safe water costs many people
18 their lives. In a place where we are so fortunate to have safe drinking water, why
19 would anyone want to put it at risk? In fact, it seems a perfect way to cripple the
20 United States if a foreign country wanted to. This statement is cited from
21 water.org: "The water crisis is the #1 global risk based on impact to society (as a
22 measure of devastation), as announced by the World Economic Forum in January
23 2015." I believe this statement to be true.

24 **Q: Do you have any thoughts regarding if there would be an impact upon the**
25 **natural resources on or near your property due to the proposed pipeline?**

26 **A:** Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
28 resources of my land, and the lands near and surrounding the proposed pipeline
29 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with from TransCanada’s own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to Landowners’ Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working

specifically on behalf of TransCanada and according to their answer to Interrogatory No. 196, as of May 5, 2017 they only employ one (1) temporary working within Nebraska. Further, according to their answer to Interrogatory No. 199, TransCanada would only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was constructed on its Preferred Route or its Mainline Alternative Route.

Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply because it would cross your land?

A: No, absolutely not. I am opposed to this project because it is not in the public interest, neither within my community nor within our state.

Q: Would you be happier if instead of crossing your land, this proposed pipeline was to cross someone else's land?

A: No, absolutely not. I would get no joy in having a fellow citizen of my state have the fear and anxiety and potential foreseeable risks and negative impacts that this type of a project carrying this type of product brings foisted upon anyone in this state or any other state.

Q: Do you think there is any intelligent route for the proposed Keystone XL Pipeline to cross the state of Nebraska?

A: I don't believe there is an intelligent route because as I have stated I don't believe this project anywhere within Nebraska is within the public interest. However, if you are presenting a hypothetical that if this proposed KXL Pipeline absolutely had to go somewhere in the state of Nebraska, the only intelligent route I believe would be to twin or closely parallel the existing Keystone I Pipeline. Both the preferred route and the mainline alternative routes are economic liabilities our state cannot risk.

Q: What do you rely upon to make that statement?

A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I, already exists in that area is reason enough as it is not in our best interest or the public interests to have more major oil pipelines crisscrossing our state. Second,

1 they have all the infrastructure already there in terms of relationships with the
2 counties and local officials and first responders along that route. Third, they have
3 already obtained easements from all the landowners along that route and have
4 relationships with them. Fourth, that route avoids our most sensitive soils, the
5 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
6 Aquifer. Sixth, they have already studied that route and previously offered it as an
7 alternative. Seventh, it just makes the most sense that as a state we would have
8 some intelligent policy of energy corridors and co-locating this type of
9 infrastructure near each other.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
11 **like the Public Service Commissioners to consider in their review of**
12 **TransCanada's Application?**

13 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
14 document below but other things may come to me or my memory may be
15 refreshed and I will add and address those things at the time of the Hearing in
16 August and address any additional items at that time as is necessary. Additionally,
17 I have not had an adequate amount of time to receive and review all of
18 TransCanada's answers to our discovery and the discovery of others so it was
19 impossible to competently and completely react to that in my testimony here and I
20 reserve the right to also address anything related to discovery that has not yet
21 concluded as of the date I signed this document below. Lastly, certain documents
22 requested have not yet been produced by TransCanada and therefore I may have
23 additional thoughts on those I will also share at the hearing as needed.

24 **Q: What is it that you are requesting the Public Service Commissioners do in**
25 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
26 **across Nebraska?**

27 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
28 a temporary job spike that this project may bring to a few counties and beyond the
29 relatively small amount of taxes this proposed foreign pipeline would possibly

1 generate. And, instead think about the perpetual and forever impacts of this
2 pipeline as it would have on the landowners specifically, first and foremost, but
3 also thereby upon the entire state of Nebraska, and to determine that neither the
4 preferred route nor the Keystone mainline alternative route are in the public
5 interest of the citizens of the state of Nebraska. And if the Commissioners were
6 inclined to modify TransCanada's proposed routes and were to be inclined to grant
7 an application for a route in Nebraska, that the only potential route that would
8 make any intelligent sense whatsoever would be twinning or near paralleling of
9 the proposed KXL with the existing Keystone I pipeline. It simply does not make
10 sense to add yet another major oil pipeline crisscrossing our state creating new
11 pumping stations, creating new impacts on additional counties and communities
12 and going through all of the court processes with myself and other landowners like
13 me when this applicant already has relationships with the landowners, the towns
14 and the communities along Keystone I, and that Keystone I is firmly outside of the
15 sand hills and a significantly further portion away from the heart of the Ogallala
16 Aquifer than the preferred route or the Keystone mainline alternative route.

17 **Q: Are all of your statements in your testimony provided above true and**
18 **accurate as of the date you signed this document to the best of your**
19 **knowledge?**

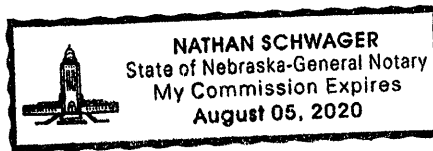
20 **A:** Yes, they are.

21 **Q: Thank you, I have no further questions at this time and reserve the right to**
22 **ask you additional questions at the August 2017 Hearing.**

Mia Bergman
Mia Bergman

Subscribed and Sworn to me before this 25th day of May, 2017.

Nathan Schwager
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Karen Berry in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Karen Berry

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: **John Pollack**

EXHIBIT

4

exhibitster.com

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: For the land that would be affected and impacted by the proposed KXL tar**
5 **sands pipeline give the Commissioners a sense how long the land has been in**
6 **your family and a little history of the land.**

7 **A:** The land has been in the Berry family since the 1950s, and it was put into Karen's
8 ownership in the mid to late 1970s. The soil is very sandy and porous. However,
9 due to a high water table, there is a permanent moist area running though the
10 middle of the property. This area has not been farmed for several decades,
11 because farm equipment tended to get stuck, and wet weather prevents a good
12 crop. The pictures I have attached are from this area, which is now beautiful and
13 somewhat secluded. I enjoy visiting this area, and wants it to be preserved.
14 The remaining farmland has proved unusually productive for dryland farming,
15 because the high water table puts adequate water into the root zone of
16 plantings. There is a danger that the digging that accompanies the pipeline will
17 disrupt the hydrology of the area, easing the drainage and dropping the water
18 table, to the detriment of dryland farming. Conversely, blocking drainage as it
19 crosses the wet area could have a damming effect. There is no guarantee in the
20 easement against pipeline-induced changes in the water table, or monitoring of any
21 changes.

22 **Q: Do you earn any income from this land?**

23 A: Yes.

24 **Q: Have you depended on the income from your land to support your livelihood**
25 **or the livelihood of your family?**

26 A: Yes.

27 **Q: Have you ever in the past or have you thought about in the future leasing all**
28 **or a portion of your land in question here?**

1 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
2 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
3 all the restrictions and risks and potential negative impacts to farming or ranching
4 operations as opposed to land that did not have those same risks. If I was looking
5 to lease or rent ground I would pay more for comparable non-pipeline land than I
6 would for comparable pipeline land and I think most folks would think the same
7 way. This is another negative economic impact that affects the landowner and the
8 county and the state and will forever and ever should TransCanada's preferred or
9 mainline alternative routes be approved. If they were to twin or closely parallel to
10 Keystone I the vast majority of landowners would be those that already have a
11 pipeline so there would be considerable less new incremental negative impacts.

12 **Q: Do you have similar concerns about selling the land?**

13 A: Well I hope not to have to sell the land in my lifetime but times change and you
14 never know what is around the corner and yes I am concerned that if another piece
15 of ground similar to mine were for sale and it did not have the pipeline and mine
16 did that I would have a lower selling price. I think this would be true for pipeline
17 ground on both the preferred and mainline alternative routes.

18 **Q: What is your intent with your land after you die?**

19 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
20 to come but I have thought about getting out if this pipeline were to come through.

21 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
22 Pipeline would cross the land described above and owned by you?**

23 A: Yes.

24 **Q: Were you or an entity for which you are a member, shareholder, or director
25 previously sued by TransCanada Keystone Pipeline, LP?**

26 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
27 petition for condemnation against our land so it could place its proposed pipeline
28 within an easement that it wanted to take from us on our land.

29 **Q: Did you defend yourself and your land in that condemnation action?**

1 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
2 and expenses in our resistance of TransCanada's lawsuit against us.

3 Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
4 incurred?

5 A: No, they have not.

6 Q: In its lawsuit against you, did TransCanada identify the amount of your
7 property that it wanted to take for its proposed pipeline?

8 A: The lawsuit against us stated they would take the amount of property that is
9 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
10 and equipment reasonably necessary to operate the pipeline.

11 Q: Did TransCanada define what they meant by "property that is reasonably
12 necessary"?

13 A: No, they did not.

14 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
15 property portion of your land?

16 A: Yes, they did.

17 Q: Did TransCanada describe what rights it proposed to take related to the
18 eminent domain property on your land?

19 A: Yes, they did.

20 Q: What rights that they proposed to take did they describe?

21 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
22 operate, and maintain the pipeline and the plant and equipment reasonably
23 necessary to operate the pipeline, specifically including surveying, laying,
24 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
25 reconstructing, removing and abandoning one pipeline, together with all fittings,
26 cathodic protection equipment, pipeline markers, and all their equipment and
27 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
28 petroleum products, and all by-products thereof."

1 Q: Prior to filing an eminent domain lawsuit to take your land that
2 TransCanada identified, do you believe they attempted to negotiate in good
3 faith with you?

4 A: No, I do not.

5 Q: Did TransCanada at any time approach you with or deliver to you their
6 proposed easement and right-of-way agreement?

7 A: Yes, they did.

8 Q: At the time you reviewed TransCanada's easement and right-of-way
9 agreement, did you understand that they would be purchasing a fee title
10 interest in your property or that they were taking something else?

11 A: I understood that they proposed to have the power to take both a temporary
12 construction easement that could last for a certain period of time and then also a
13 permanent easement which they described to be 50 feet across or in width, and
14 that would run the entire portion of my property from where a proposed pipeline
15 would enter my property until where it would exit the property.

16 Q: Is the document included with your testimony here as Attachment No. 3, a
17 true and accurate copy of TransCanada's proposed Easement and Right-of-
18 Way agreement that they included with their condemnation lawsuit against
19 you?

20 A: Yes, it is.

21 Q: Have you had an opportunity to review TransCanada's proposed Easement
22 and Right-of-Way agreement?

23 A: Yes, I have.

24 Q: What is your understanding of the significance of the Easement and Right-of-
25 Way agreement as proposed by TransCanada?

26 A: My understanding is that this is the document that will govern all of the rights and
27 obligations and duties as well as the limitations of what I can and cannot do and
28 how I and any future landowner and any person I invite to come onto my property

1 must behave as well as what TransCanada is and is not responsible for and how
2 they can use my land.

3 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
4 **agreement do you have any concerns about any portions of it or any of the**
5 **language either included in the document or missing from the proposed**
6 **document?**

7 **A:** Yes, I have a number of significant concerns and worries about the document and
8 how the language included and the language not included potentially negatively
9 impacts my land and thereby potentially negatively impacts my community and
10 my state.

11 **Q: I would like you to walk the Commissioners through each and every one of**
12 **your concerns about TransCanada's proposed Easement and Right-of-Way**
13 **agreement so they can develop an understanding of how that language and**
14 **the terms of that contract, in your opinion, potentially negatively impacts you**
15 **and your land. So, if you can start at the beginning of that document and**
16 **let's work our way through it, okay?**

17 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
18 Easement and Right-of-Way agreement and how it negatively could affect my
19 property rights and my economic interests.

20 **Q. Okay, let's start with your first concern please.**

21 **A:** The very first sentence talks about consideration or how much money they will
22 pay to compensate me for all of the known and unknown effects and all of the
23 rights I am giving up and for all the things they get to do to my land and for what
24 they will prevent me from doing on my land and they only will pay me one time at
25 the signing of the easement agreement. That is a huge problem.

26 **Q: Explain to the Commissioners why that is a problem.**

27 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada's shareholders
10 keep all that money and it never finds its way to Nebraska.

11 **Q: What is your next concern?**

12 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
13 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
14 limited partnership..." and I have no idea who that really is. I have no idea who is
15 forcing this pipeline on us or who the owners of the entities are, or what are the
16 assets backing this limited partnership, or who the general partner is, or who all
17 the limited partners are, and who makes up the ownership of these partners or the
18 structure or any of the basic things you would want to know and understand if you
19 would want to do business with such an outfit. According to TransCanada's
20 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
21 liability company called TransCanada Keystone Pipeline GP, LLC is the general
22 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
23 basically nothing. That is really scary since the general partner has the liability but
24 virtually none of the ownership and who knows if it has any other assets.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who could become the owner of over 275 miles of**
27 **Nebraska land?**

28 A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow my easement to be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

A: Then it says "...a perpetual permanent easement and right-of-way..." and this really concerns me. Why does the easement and right-of-way have to be perpetual and permanent? That is the question myself and my family want an answer to. Perpetual to me is like forever and that doesn't make sense.

Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?

A: For many reasons but mostly because the tar sands are finite. I am unaware of any data proving there is a perpetual supply of tar sands. I am not aware in TransCanada's application where it proves there is a perpetual necessity for this pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become
2 obsolete or no longer needed. Nothing manmade lasts forever. My land however
3 will, and I want my family or future Nebraska families to have that land as
4 undisturbed as possible and it is not in my interest or the public interest of
5 Nebraska to be forced to give up perpetual and permanent rights in the land for
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 A: The easement language includes all these things TransCanada can do and it says
9 "...abandoning in place..." so they can just leave this pipeline under my ground
10 until the end of time just sitting there while they are not using it, but I am still
11 prevented from doing on my land and using my land what I would like. If I owned
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
13 there. It doesn't make sense and it scares me and it is not in my interest or the
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
16 **right?**

17 A: Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 A: Here the Easement identifies a 24-month deadline to complete construction of the
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period
21 starts to run from the moment "actual pipeline installation activities" begin on
22 Landowners property. It appears that TransCanada would define this phrase as
23 needed. It would be wise to explain what types of TransCanada action constitutes
24 "installation activity" For instance, would the placement and storage of an
25 excavator or other equipment on or near the Easement property be an activity or
26 would earth have to be moved before the activity requirement is triggered. This
27 vague phrase is likely to lead to future disputes and litigation that is not in the best
28 interest of the welfare of Nebraska and would not protect property interests. The
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events
2 occur that are completely out of their control. In TransCanada's easement this is
3 expanded to include "without limitation...availability of labor and materials."
4 Extending this language to labor and materials is problematic because these are
5 two variables that TransCanada does have some or significant control over and to
6 allow extension of the 24-month period over events not truly out of the control of
7 TransCanada and without further provision for compensation for the Landowner is
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially
12 reasonable costs and expenses" will pay for damages caused but then limits
13 TransCanada's liability to certain circumstances. There is no definition of
14 "commercially reasonable" and no stated right that the Landowner would get to
15 determine the amounts of cost or expense that is "commercially reasonable."
16 TransCanada excepts out from their liability any damages that are caused by
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of
18 Landowner. It is understandable that if the Landowner were to willfully and
19 intentionally cause damages to the pipeline that Landowner should be liable.
20 However, anything short of willful misconduct should be the liability of
21 TransCanada who is subjecting the pipeline on the Landowner and who is making
22 a daily profit from that pipeline. When evaluating the impact on property rights of
23 this provision, you must consider the potentially extremely expensive fight a
24 Landowner would have over this question of whether or not damage was an act of
25 negligence. Putting this kind of potential liability upon the Landowner is
26 incredibly problematic and is detrimental to the protection of property rights. I
27 don't think this unilateral power which I can't do anything about as the landowner
28 is in the best economic interest of the land in question or the State of Nebraska for
29 landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

1 A: The Easement also allows some rights for Landowner but restricts them at the
2 same time and again at the sole and unilateral decision making of TransCanada.
3 TransCanada will determine if the actions of Landowner might in anyway
4 endanger or obstruct or interfere with TransCanada's full use of the Easement or
5 any appurtenances thereon to the pipeline itself or to their access to the Easement
6 or within the Easement and TransCanada retains the right at any time, whether
7 during growing season or not, to travel "within and along Easement Area on foot
8 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
9 retain the rights to prevent any landowner activity that it thinks may "unreasonably
10 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
11 undefined and unilateral restrictions are not conducive to the protection of
12 property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
15 Landowner's land any debris of any kind without any input or power of
16 Landowner to demand an alternative method or location of debris disposal. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
21 "where rock is encountered" mean and why does TransCanada solely get to
22 determine whether or not this phrase is triggered. This phrase could be used to
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively
25 affect Landowners property and is not conducive to the protection of property
26 rights. A shallow pipeline is much more likely to become a danger and liability in
27 the future given farming operations and buried irrigation lines and other factors
28 common to the current typical agricultural uses of the land in question impacted
29 by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property and are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada’s taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property and are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the

ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at any time to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"

- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q:** Did TransCanada ever offer you financial compensation for the rights that
2 they sought to obtain in your land, and for what they sought to prevent you
3 and any future land owner of your property from doing in the future?

4 **A:** Yes, we received an offer from them.

5 **Q:** As the owner of the land in question and as the person who knows it better
6 than anyone else, do you believe that TransCanada offered you just, or fair,
7 compensation for all of what they proposed to take from you so that their tar
8 sands pipeline could be located across your property?

9 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and effects and the rights that I'm giving up, and
11 what I we will be prevented from doing in the future and how their pipeline would
12 impact my property for ever and ever.

13 **Q:** Has TransCanada at any time offered to compensate you annually, such as
14 wind farm projects do, for the existence of their potential tar sands pipeline
15 across your property.

16 **A:** No, never.

17 **Q:** At any time did TransCanada present you with or request that you, as the
18 owner of the land in question, sign and execute a document called, "Advanced
19 Release of Damage Claims and Indemnity Agreement?"

20 **A:** Yes, they did and it was included in the County Court lawsuit against us.

21 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
22 "Advanced Release of Damage Claims and Indemnity Agreement?"

23 **A:** Yes, it is.

24 **Q:** What was your understanding of that document?

25 **A:** When I read that document in the plain language of that document, it was my
26 understanding that TransCanada was attempting to pay me a very small amount at
27 that time in order for me to agree to give up my rights to be compensated from
28 them in the future related to any damage or impact they may have upon my

1 property "arising out of, in connection with, or alleged to resulted from
2 construction or surveying over, under or on" my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A: Because I do not believe that it is fair or just to try to get me to agree to a small
7 sum of money when I have no idea how bad the impacts or damages that they, or
8 their contractors, or subcontractors, or other agents or employees, may cause on
9 my land at any time in the future that resulted from the construction or surveying
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt angry because it was simply another attempt for TransCanada to try to pay
13 very little to shield themselves against known and foreseeable impacts that their
14 pipeline, and the construction of it, would have upon my land. It made me feel
15 that they knew it was in their financial interest to pay me as little as possible to
16 prevent me from ever having the opportunity to seek fair compensation again, and
17 that this must be based upon their experience of unhappy landowners and
18 situations in other places where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you**
20 **thought their proposed location of their proposed pipeline across your land**
21 **was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you**
24 **thought their proposed location of their proposed pipeline across your land**
25 **was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
28 **Takings Clause?**

29 A: Yes, I am.

1 **Q:** What is your understanding of the Fifth Amendment as it relates to taking of
2 an American citizens property?

3 **A:** My understanding is that, according to the United States Constitution, that if the
4 government is going to take land for public use, then in that case, or by taking for
5 public use, it can only occur if the private land owner is compensated justly, or
6 fairly.

7 **Q:** Has TransCanada ever contacted you specially to explain the way in which
8 the public could use its proposed Keystone XL Pipeline?

9 **A:** No, they have not.

10 **Q:** Can you think of any way in which the public, that is the citizens of the State
11 of Nebraska, can directly use the proposed TransCanada Keystone XL
12 Pipeline, as it dissects the State of Nebraska?

13 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
14 public benefits from this pipeline in any way, how they can use it any way, or how
15 it's in the public interest in any way. By looking at the map, it is quite clear to me
16 that the only reason it's proposed to come through Nebraska, is that because we
17 are geographically in the way from between where the privately-owned Tar Sands
18 are located to where TransCanada wants to ship the Tar Sands to refineries in
19 Houston, Texas.

20 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
21 crude petroleum, or oil and petroleum by-products that you would like to
22 ship in its pipeline?

23 **A:** No, it has not.

24 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
25 products that you, at this time or any time in the future, would desire to place
26 for transport within the proposed TransCanada Keystone XL Pipeline?

27 **A:** No, I do not.

1 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
2 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
3 products within the proposed TransCanada Keystone XL Pipeline?

4 **A:** No, I do not. I've never heard of such a person or company like that.

5 **Q:** Do you pay property taxes for the land that would be affected and impacted
6 at the proposed TransCanada Keystone XL Pipeline?

7 **A:** Yes, I do.

8 **Q:** Why do you pay property taxes on that land?

9 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
10 of that property.

11 **Q:** Because you follow the law and pay property taxes, do you believe you
12 deserve any special consideration or treatment apart from any other person
13 or company that pays property taxes?

14 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
15 just what you do.

16 **Q:** Do you believe the fact that you pay property taxes entitles you to special
17 treatment of any kind, or special rights of any kind?

18 **A:** No, of course not.

19 **Q:** Do you believe the fact that you pay property taxes on your land would be
20 enough to qualify you to have the power of eminent domain to take land of
21 your neighbors or other people in your county, or other people across the
22 state of Nebraska?

23 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
24 I expect an award for or any type of special consideration.

25 **Q:** Have you at any time ever employed any person other than yourself?

26 **A:** Well, yes I have.

27 **Q:** Do you believe that the fact that you have, at some point in your life,
28 employed one or more other persons entitle you to any special treatment or

1 consideration above and beyond any other Nebraskan that has also employed
2 one or more persons?

3 A: No, of course not.

4 Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer
5 have at one point employed another person within this state, entitles you to
6 preferential treatment or consideration of any kind?

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 Q: At the beginning of your statement, you briefly described your property that
10 would be impacted by the potential Keystone XL Pipeline. I would like you to
11 give the Commissioners a sense of specifically how you believe the proposed
12 Keystone XL Pipeline and its preferred route, which proposes to go across
13 your land, how it would in your opinion based on your knowledge,
14 experience, and background of your land, affect it. So please share with the
15 Commissioners the characteristics of your land that you believe is important
16 for them to understand, while they evaluate TransCanada's application for a
17 route for its proposed pipeline to cross Nebraska and across your land,
18 specifically.

19 A: The terms of the easement essentially guarantee that the pipe and its remaining
20 contents will be left in the ground "as is." In this case, this would mean depositing
21 the contents directly into the water table, or excavating the pipe in an area where it
22 is difficult to operate machinery, entailing additional expense. This is in no way
23 compensated by the terms of the easement. The terms of the easement must be
24 addressed in order for the Commission to truly consider property rights, economic
25 interests, the welfare of Nebraska, and the balancing of the proposed routes against
26 all they will affect and impact.

27 Q: Do you have any concerns TransCanada's fitness as an applicant for a major
28 crude oil pipeline in its preferred location, or ultimate location across the
29 state of Nebraska?

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 Q: **Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 Q: **Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 Q: **Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
24 a detrimental impact upon the environment of my land specifically, as well as the
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
7 **testimony?**

8 **A:** Yes, I have.

9 **Q: Where have you seen that before?**

10 **A:** That is a map I think I first saw a couple years ago that shows the Keystone XL
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
12 believe the portion of the alternative route in Nebraska essentially twins or
13 parallels Keystone I.

14 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
15 **Application, and as found on Attachment No. 7, here to your testimony, is in**
16 **the public interest of Nebraska?**

17 **A:** No, I do not.

18 **Q: Do you believe that the Keystone mainline alternative route as shown on**
19 **Attachment No. 7 included with your testimony here is a major oil pipeline**
20 **route that is in the public interest of Nebraska?**

21 **A:** No, I do not.

22 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
23 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
24 **your testimony, is in the public interest of Nebraska?**

25 **A:** No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 **A:** No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with from TransCanada’s own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to our Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. However, if
20 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
21 had to go somewhere in the state of Nebraska, the only intelligent route I believe
22 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
23 preferred route and the mainline alternative routes are economic liabilities our
24 state cannot risk.

25 **Q: What do you rely upon to make that statement?**

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
10 **like the Public Service Commissioners to consider in their review of**
11 **TransCanada's Application?**

12 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary. Additionally,
16 I have not had an adequate amount of time to receive and review all of
17 TransCanada's answers to our discovery and the discovery of others so it was
18 impossible to competently and completely react to that in my testimony here and I
19 reserve the right to also address anything related to discovery that has not yet
20 concluded as of the date I signed this document below. Lastly, certain documents
21 requested have not yet been produced by TransCanada and therefore I may have
22 additional thoughts on those I will also share at the hearing as needed.

23 **Q: What is it that you are requesting the Public Service Commissioners do in**
24 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
25 **across Nebraska?**

26 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
27 a temporary job spike that this project may bring to a few counties and beyond the
28 relatively small amount of taxes this proposed foreign pipeline would possibly
29 generate. And, instead think about the perpetual and forever impacts of this

1 pipeline as it would have on the landowners specifically, first and foremost, but
2 also thereby upon the entire state of Nebraska, and to determine that neither the
3 preferred route nor the Keystone mainline alternative route are in the public
4 interest of the citizens of the state of Nebraska. And if the Commissioners were
5 inclined to modify TransCanada's proposed routes and were to be inclined to grant
6 an application for a route in Nebraska, that the only potential route that would
7 make any intelligent sense whatsoever would be twinning or near paralleling of
8 the proposed KXL with the existing Keystone I pipeline. It simply does not make
9 sense to add yet another major oil pipeline crisscrossing our state creating new
10 pumping stations, creating new impacts on additional counties and communities
11 and going through all of the court processes with myself and other landowners like
12 me when this applicant already has relationships with the landowners, the towns
13 and the communities along Keystone I, and that Keystone I is firmly outside of the
14 sand hills and a significantly further portion away from the heart of the Ogallala
15 Aquifer than the preferred route or the Keystone mainline alternative route.

16 **Q: Does Attachment No. 8 here contain other documents you are competent to**
17 **speak about that you wish to be part of your testimony and to discuss in more**
18 **detail as needed at the August 2017 Hearing?**

19 A: Yes.

20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

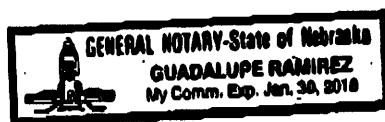
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**

Karen Berry
Karen Berry

Subscribed and Sworn to me before this 30th day of May, 2017.

Guadalupe Ramirez
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Johnnie Bialas in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Nance County)

1 **Q: Please state your name.**

2 A: My name is Johnnie Bialas.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Nance County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: Maxine Bialas

EXHIBIT

5

exhibitsticker.com

1 **Q: How long the land has been in your family?**

2 A: Our farm has been in the Bialas family for 100 years.

3 **Q: Do you earn any income from this land?**

4 A: Yes.

5 **Q: Have you depended on the income from your land to support your livelihood**
6 **or the livelihood of your family?**

7 A: Yes.

8 **Q: Have you ever in the past or have you thought about in the future leasing all**
9 **or a portion of your land in question here?**

10 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
11 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
12 all the restrictions and risks and potential negative impacts to farming or ranching
13 operations as opposed to land that did not have those same risks. If I was looking
14 to lease or rent ground I would pay more for comparable non-pipeline land than I
15 would for comparable pipeline land and I think most folks would think the same
16 way. This is another negative economic impact that affects the landowner and the
17 county and the state and will forever and ever should TransCanada's preferred or
18 mainline alternative routes be approved. If they were to twin or closely parallel to
19 Keystone I the vast majority of landowners would be those that already have a
20 pipeline so there would be considerable less new incremental negative impacts.

21 **Q: Do you have similar concerns about selling the land?**

22 A: Well I hope not to have to sell the land in my lifetime but times change and you
23 never know what is around the corner and yes I am concerned that if another piece
24 of ground similar to mine were for sale and it did not have the pipeline and mine
25 did that I would have a lower selling price. I think this would be true for pipeline
26 ground on both the preferred and mainline alternative routes.

27 **Q: What is your intent with your land after you die?**

28 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
29 to come but I have thought about getting out if this pipeline were to come through.

1 Q: Are you aware that the preferred route of TransCanada's Keystone XL
2 Pipeline would cross the land described above and owned by you?

3 A: Yes.

4 Q: Were you or an entity for which you are a member, shareholder, or director
5 previously sued by TransCanada Keystone Pipeline, LP?

6 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
7 petition for condemnation against our land so it could place its proposed pipeline
8 within an easement that it wanted to take from us on our land.

9 Q: Did you defend yourself and your land in that condemnation action?

10 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
11 and expenses in our resistance of TransCanada's lawsuit against us.

12 Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
13 incurred?

14 A: No, they have not.

15 Q: In its lawsuit against you, did TransCanada identify the amount of your
16 property that it wanted to take for its proposed pipeline?

17 A: The lawsuit against us stated they would take the amount of property that is
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
19 and equipment reasonably necessary to operate the pipeline.

20 Q: Did TransCanada define what they meant by "property that is reasonably
21 necessary"?

22 A: No, they did not.

23 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
24 property portion of your land?

25 A: Yes, they did.

26 Q: Did TransCanada describe what rights it proposed to take related to the
27 eminent domain property on your land?

28 A: Yes, they did.

29 Q: What rights that they proposed to take did they describe?

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
2 operate, and maintain the pipeline and the plant and equipment reasonably
3 necessary to operate the pipeline, specifically including surveying, laying,
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
5 reconstructing, removing and abandoning one pipeline, together with all fittings,
6 cathodic protection equipment, pipeline markers, and all their equipment and
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
8 petroleum products, and all by-products thereof.”

9 Q: Prior to filing an eminent domain lawsuit to take your land that
10 TransCanada identified, do you believe they attempted to negotiate in good
11 faith with you?

12 A: No, I do not.

13 Q: Did TransCanada at any time approach you with or deliver to you their
14 proposed easement and right-of-way agreement?

15 A: Yes, they did.

16 Q: At the time you reviewed TransCanada’s easement and right-of-way
17 agreement, did you understand that they would be purchasing a fee title
18 interest in your property or that they were taking something else?

19 A: I understood that they proposed to have the power to take both a temporary
20 construction easement that could last for a certain period of time and then also a
21 permanent easement which they described to be 50 feet across or in width, and
22 that would run the entire portion of my property from where a proposed pipeline
23 would enter my property until where it would exit the property.

24 Q: Is the document included with your testimony here as Attachment No. 2, a
25 true and accurate copy of TransCanada’s proposed Easement and Right-of-
26 Way agreement that they included with their condemnation lawsuit against
27 you?

28 A: Yes, it is.

1 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
2 and Right-of-Way agreement?

3 **A:** Yes, I have.

4 **Q:** What is your understanding of the significance of the Easement and Right-of-
5 Way agreement as proposed by TransCanada?

6 **A:** My understanding is that this is the document that will govern all of the rights and
7 obligations and duties as well as the limitations of what I can and cannot do and
8 how I and any future landowner and any person I invite to come onto my property
9 must behave as well as what TransCanada is and is not responsible for and how
10 they can use my land.

11 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
12 agreement do you have any concerns about any portions of it or any of the
13 language either included in the document or missing from the proposed
14 document?

15 **A:** Yes, I have a number of significant concerns and worries about the document and
16 how the language included and the language not included potentially negatively
17 impacts my land and thereby potentially negatively impacts my community and
18 my state.

19 **Q:** I would like you to walk the Commissioners through each and every one of
20 your concerns about TransCanada's proposed Easement and Right-of-Way
21 agreement so they can develop an understanding of how that language and
22 the terms of that contract, in your opinion, potentially negatively impacts you
23 and your land. So, if you can start at the beginning of that document and
24 let's work our way through it, okay?

25 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
26 Easement and Right-of-Way agreement and how it negatively could affect my
27 property rights and my economic interests.

28 **Q:** Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
6 percent clear on exactly who could become the owner of over 275 miles of
7 Nebraska land?

8 **A:** No.

9 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
10 percent clear on exactly who will be operating and responsible for
11 approximately 275 miles of tar sands pipeline underneath and through
12 Nebraska land?

13 **A:** No.

14 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
15 and the State of Nebraska of TransCanada's easement terms.

16 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q:** Do you think that type of uncertainty and lack of control over a major piece
26 of infrastructure crossing our State is in the public interest?

27 **A:** No, certainly not, in fact, just the opposite.

28 **Q:** What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 3.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 A: No, they have not.

5 Q: Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 A: No, they have not.

9 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 A: Yes, I am.

12 Q: What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 Q: Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 A: No, they have not.

21 Q: Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
4 crude petroleum, or oil and petroleum by-products that you would like to
5 ship in its pipeline?

6 A: No, it has not.

7 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
8 products that you, at this time or any time in the future, would desire to place
9 for transport within the proposed TransCanada Keystone XL Pipeline?

10 A: No, I do not.

11 Q: Do you know anyone in the state of Nebraska who would be able to ship any
12 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
13 products within the proposed TransCanada Keystone XL Pipeline?

14 A: No, I do not. I've never heard of such a person or company like that.

15 Q: Do you pay property taxes for the land that would be affected and impacted
16 at the proposed TransCanada Keystone XL Pipeline?

17 A: Yes, I do.

18 Q: Why do you pay property taxes on that land?

19 A: Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 Q: Because you follow the law and pay property taxes, do you believe you
22 deserve any special consideration or treatment apart from any other person
23 or company that pays property taxes?

24 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 Q: Do you believe the fact that you pay property taxes entitles you to special
27 treatment of any kind, or special rights of any kind?

28 A: No, of course not.

1 **Q:** Do you believe the fact that you pay property taxes on your land would be
2 enough to qualify you to have the power of eminent domain to take land of
3 your neighbors or other people in your county, or other people across the
4 state of Nebraska?

5 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q:** Have you at any time ever employed any person other than yourself?

8 **A:** Well, yes I have.

9 **Q:** Do you believe that the fact that you have, at some point in your life,
10 employed one or more other persons entitle you to any special treatment or
11 consideration above and beyond any other Nebraskan that has also employed
12 one or more persons?

13 **A:** No, of course not.

14 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
15 have at one point employed another person within this state, entitles you to
16 preferential treatment or consideration of any kind?

17 **A:** No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q:** At the beginning of your statement, you briefly described your property that
20 would be impacted by the potential Keystone XL Pipeline. I would like you to
21 give the Commissioners a sense of specifically how you believe the proposed
22 Keystone XL Pipeline and its preferred route, which proposes to go across
23 your land, how it would in your opinion based on your knowledge,
24 experience, and background of your land, affect it. So please share with the
25 Commissioners the characteristics of your land that you believe is important
26 for them to understand, while they evaluate TransCanada's application for a
27 route for its proposed pipeline to cross Nebraska and across your land,
28 specifically.

1 A: The water level at our farm is high. We cannot have a basement under our house.
2 The water that we drink is 8 (eight) feet deep. If the oil were to spill or leak it
3 would poison our drinking water and kill us. The water hole in our pasture was
4 dug by N.R.D. and the cattle drink from it. TransCanada wants the pipeline to go
5 right by the water hole.

6 Q: Do you have any concerns TransCanada's fitness as an applicant for a
7 major crude oil pipeline in its preferred location, or ultimate location across
8 the state of Nebraska?

9 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
10 or even bullied around and being made to feel scared that they did not have any
11 options but to sign whatever papers TransCanada told them they had to. I am
12 aware of folks being threatened that their land would be taken if they didn't follow
13 what TransCanada was saying. I am aware of tactics to get people to sign
14 easements that I don't believe have any place in Nebraska or anywhere such as
15 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
16 landowners and convince them they should sign TransCanada's easement
17 agreements. I am aware of older folks and widows or widowers feeling they had
18 no choice but to sign TransCanada's Easement and they didn't know they could
19 fight or stand up for themselves. From a more practical standpoint, I am worried
20 that according to their answer to our Interrogatory No. 211, TransCanada only
21 owns and operates one (1) major oil pipeline. They simply do not have the
22 experience with this type of pipeline and that scares me. There are others but that
23 is what I can recollect at this time and if I remember more or my recollection is
24 refreshed I will share those with the Commissioners at the Hearing in August.

25 Q: Do you believe TransCanada's proposed method of compensation to you as a
26 landowner is reasonable or just?

27 A: No, I do not.

28 Q: Do you have any concern about limitations that the construction of this
29 proposed pipeline across your affected land would prevent construction of

1 **future structures upon the portion of your land affected by the proposed**
2 **easement and immediately surrounding areas?**

3 A: Well yes, of course I do. We would not be able to build many, if any, types of
4 structures directly across or touching the easement, and it would be unwise and I
5 would be uncomfortable to build anything near the easement for fear of being
6 blamed in the future should any damage or difficulty result on my property in
7 regards to the pipeline.

8 **Q: Do you think such a restriction would impact you economically?**

9 A: Well yes, of course.

10 **Q: How do you think such a restriction would impact you economically?**

11 A: The future of this land may not be exactly how it's being use as of this moment,
12 and having the restrictions and limiting my ability to develop my land in certain
13 ways presents a huge negative economic impact on myself, my family, and any
14 potential future owner of the property. You have no idea how I or the future own
15 may want to use this land in the future or the other land across Nebraska
16 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
17 ago it would have been hard to imagine all the advances that we have now or how
18 things change. Because the Easement is forever and TransCanada gets the rights in
19 my land forever we have to think with a very long term view. By placing their
20 pipeline on under across and through my land that prevents future development
21 which greatly negatively impacts future taxes and tax revenue that could have
22 been generated by the County and State but now will not. When you look at the
23 short blip of economic activity that the two years of temporary construction efforts
24 may bring, that is far outweighed by the perpetual and forever loss of opportunity
25 and restrictions TransCanada is forcing upon us and Nebraska.

26 **Q: Do you have any concerns about the environmental impact of the proposed**
27 **pipeline?**

28 A: Yes, I do.

29 **Q: What are some of those concerns?**

1 A: As an affected land owner and Nebraskan, I am concerned that any construction,
2 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
3 a detrimental impact upon the environment of my land specifically, as well as the
4 lands near my land and surrounding the proposed pipeline route.

5 **Q: Do you have any other environmental concerns?**

6 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
7 construction and/or maintenance and operation. I am concerned about spills and
8 leaks that TransCanada has had in the past and will have in the future. This could
9 be catastrophic to my operations or others and to my county and the State.

10 **Q: Do you have any thoughts regarding if there would be an impact upon the**
11 **natural resources on or near your property due to the proposed pipeline?**

12 A: Yes, I believe that any construction, operation, and/or maintenance of the
13 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
14 resources of my land, and the lands near and surrounding the proposed pipeline
15 route.

16 **Q: Do you have any worries about potential impacts from the proposed pipeline**
17 **to the soil of your land, or land near you?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the
19 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
20 land, as well as land along and surrounding the proposed pipeline route. This
21 includes, but is not limited to, the reasons that we discussed above of disturbing
22 the soil composition and makeup as it has naturally existed for thousands and
23 millions of years during the construction process, and any future maintenance or
24 removal process. I'm gravely concerned about the fertility and the loss of
25 economic ability of my property to grow the crops, or grow the grasses, or grow
26 whatever it is at that time they exist on my property or that I may want to grow in
27 the future, or that a future owner may want to grow. The land will never be the
28 same from as it exists now undisturbed to after it is trenched up for the proposed
29 pipeline.

1 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
2 **upon the groundwater over your land, or surrounding lands?**

3 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
4 the proposed Keystone XL Pipeline would have a detrimental impact upon the
5 groundwater of not only under my land, but also near and surrounding the pipeline
6 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
7 simple and it is simply too valuable to our State and the country to put at
8 unreasonable risk.

9 **Q: Do you have any concern about the potential impact of the proposed pipeline**
10 **upon the surface water on, or near or around your land?**

11 A: Yes, I have significant concerns that any construction, operation, and/or
12 maintenance of the proposed Keystone XL Pipeline would have detrimental
13 impact upon the surface water of not only within my property boundary, but along
14 and near and surrounding the pipeline route, and in fact, across the state of
15 Nebraska.

16 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
17 **upon the wildlife and plants, other than your growing crops on or near your**
18 **land?**

19 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
20 the proposed Keystone XL Pipeline would have a detrimental impact upon the
21 wildlife and the plants, not only that are located on or can be found upon my land,
22 but also near and along the proposed pipeline route.

23 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
24 **fair market value of your land?**

25 A: Yes, I do. I am significantly concerned about how the existence of the proposed
26 pipeline underneath and across and through my property will negatively affect the
27 fair market value at any point in the future, especially at that point in which I
28 would need to sell the property, or someone in my family would need to sell the
29 property. I do not believe, and certainly would not be willing to pay, the same

price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 5, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows what was called the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

Q: Do you believe that TransCanada's preferred route as found on page 5 of its Application, and as found on Attachment No. 6, here to your testimony, is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe that the Keystone mainline alternative route as shown on Attachment No. 6 included with your testimony here is a major oil pipeline route that is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe the portion of the proposed pipeline within Nebraska as found in Attachment No. 5 to your testimony, is in the public interest of Nebraska?

1 A: No, I do not.

2 Q: Do you believe there is any potential route for the proposed Keystone XL
3 Pipeline across, within, under, or through the State of Nebraska that is in the
4 public interest of the citizens of Nebraska?

5 A: No, I do not.

6 Q: Why do you hold that belief?

7 A: Because there simply is no public interest based on all of the factors that I am
8 aware and that I have read and that I have studied that this Commission is to
9 consider that would establish that a for-profit foreign-owned pipeline that simply
10 crosses Nebraska because we are geographically in the way between where tar
11 sands are in Canada to where it wants to ship it to in Texas could ever be in the
12 public interest of Nebraskans. We derive no benefit from this project. It is not for
13 public use. Nebraska is simply in the way and when all considerations are taken in
14 there is no net benefit of any kind for Nebraska should this project be placed in our
15 state. Even if there was some arguable “benefit” it is not enough to outweigh all
16 the negative impacts and concerns.

17 Q: What do you think about the applicant, TransCanada’s argument that it’s
18 preferred route for its proposed Keystone XL Pipeline is in the public interest
19 of Nebraska because it may bring temporary jobs during the construction
20 phase to Nebraska?

21 A: First of all, not all jobs are created equally. Most jobs that are created, whether
22 temporary or on a permanent basis, don’t come with a project that has all the
23 potential and foreseeable negative impacts, many of which we have discussed here
24 and other witnesses throughout the course of this hearing have and will discuss. If
25 I decide to hire and employ someone to help me out in my farming or ranching
26 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
27 to my land or my town or my county or my state. And I’ve hired someone who is
28 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
29 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all

1 jobs are not created equal. Additionally, I understand from what I'm familiar with
2 from TransCanada's own statements that the jobs numbers they originally touted
3 were determined to be a minute fraction of the permanent jobs that had been
4 projected. According to their answer to our Interrogatory No. 191, TransCanada
5 has created only thirty-four (34) jobs within Nebraska working specifically on
6 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
7 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
8 Further, according to their answer to Interrogatory No. 199, TransCanada would
9 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
10 constructed on its Preferred Route or its Mainline Alternative Route.

11 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
12 **because it would cross your land?**

13 A: No, absolutely not. I am opposed to this project because it is not in the public
14 interest, neither within my community nor within our state.

15 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
16 **was to cross someone else's land?**

17 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
18 the fear and anxiety and potential foreseeable risks and negative impacts that this
19 type of a project carrying this type of product brings foisted upon anyone in this
20 state or any other state.

21 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
22 **Pipeline to cross the state of Nebraska?**

23 A: I don't believe there is an intelligent route because as I have stated I don't believe
24 this project anywhere within Nebraska is within the public interest. However, if
25 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
26 had to go somewhere in the state of Nebraska, the only intelligent route I believe
27 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
28 preferred route and the mainline alternative routes are economic liabilities our
29 state cannot risk.

1 **Q: What do you rely upon to make that statement?**

2 **A:** Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
3 already exists in that area is reason enough as it is not in our best interest or the
4 public interests to have more major oil pipelines crisscrossing our state. Second,
5 they have all the infrastructure already there in terms of relationships with the
6 counties and local officials and first responders along that route. Third, they have
7 already obtained easements from all the landowners long that route and have
8 relationships with them. Fourth, that route avoids our most sensitive soils, the
9 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
10 Aquifer. Sixth, they have already studied that route and previously offered it as an
11 alternative. Seventh, it just makes the most sense that as a state we would have
12 some intelligent policy of energy corridors and co-locating this type of
13 infrastructure near each other.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

4 A: I am respectfully and humbly requesting that the Commissioners think far beyond
5 a temporary job spike that this project may bring to a few counties and beyond the
6 relatively small amount of taxes this proposed foreign pipeline would possibly
7 generate. And, instead think about the perpetual and forever impacts of this
8 pipeline as it would have on the landowners specifically, first and foremost, but
9 also thereby upon the entire state of Nebraska, and to determine that neither the
10 preferred route nor the Keystone mainline alternative route are in the public
11 interest of the citizens of the state of Nebraska. And if the Commissioners were
12 inclined to modify TransCanada's proposed routes and were to be inclined to grant
13 an application for a route in Nebraska, that the only potential route that would
14 make any intelligent sense whatsoever would be twinning or near paralleling of
15 the proposed KXL with the existing Keystone I pipeline. It simply does not make
16 sense to add yet another major oil pipeline crisscrossing our state creating new
17 pumping stations, creating new impacts on additional counties and communities
18 and going through all of the court processes with myself and other landowners like
19 me when this applicant already has relationships with the landowners, the towns
20 and the communities along Keystone I, and that Keystone I is firmly outside of the
21 sand hills and a significantly further portion away from the heart of the Ogallala
22 Aquifer than the preferred route or the Keystone mainline alternative route.

23 **Q: Are all of your statements in your testimony provided above true and**
24 **accurate as of the date you signed this document to the best of your**
25 **knowledge?**

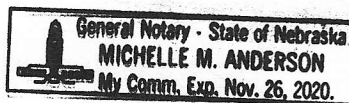
26 A: Yes, they are.

27 **Q: Thank you, I have no further questions at this time and reserve the right to**
28 **ask you additional questions at the August 2017 Hearing.**

Johnnie Bialas
Johnnie Bialas

Subscribed and Sworn to me before this 27th day of May, 2017.

Michelle M Anderson
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Cheri Blocher in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Cheri Blocher

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

EXHIBIT

6

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1 **Q: If you are you married tell us your spouse's name please?**

2 A: Michael Blocher.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: Our land in Antelope County where my I was born, has been in my family all
10 sixty-five years of my life. Here we are carrying on the tradition of raising corn,
11 soy beans, and American Quarter Horses began by my late father and mother.

12 **Q: Do you earn any income from this land?**

13 A: Yes.

14 **Q: Have you depended on the income from your land to support your livelihood**
15 **or the livelihood of your family?**

16 A: Yes.

17 **Q: Have you ever in the past or have you thought about in the future leasing all**
18 **or a portion of your land in question here?**

19 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
20 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
21 all the restrictions and risks and potential negative impacts to farming or ranching
22 operations as opposed to land that did not have those same risks. If I was looking
23 to lease or rent ground I would pay more for comparable non-pipeline land than I
24 would for comparable pipeline land and I think most folks would think the same
25 way. This is another negative economic impact that affects the landowner and the
26 county and the state and will forever and ever should TransCanada's preferred or
27 mainline alternative routes be approved. If they were to twin or closely parallel to
28 Keystone I the vast majority of landowners would be those that already have a
29 pipeline so there would be considerable less new incremental negative impacts.

1 **Q: Do you have similar concerns about selling the land?**

2 A: Well I hope not to have to sell the land in my lifetime but times change and you

3 never know what is around the corner and yes I am concerned that if another piece

4 of ground similar to mine were for sale and it did not have the pipeline and mine

5 did that I would have a lower selling price. I think this would be true for pipeline

6 ground on both the preferred and mainline alternative routes.

7 **Q: What is your intent with your land after you die?**

8 A: Like I said I hope not to have to sell and I hope that it stays in the family for years

9 to come but I have thought about getting out if this pipeline were to come through.

10 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**

11 **Pipeline would cross the land described above and owned by you?**

12 A: Yes.

13 **Q: Were you or an entity for which you are a member, shareholder, or director**

14 **previously sued by TransCanada Keystone Pipeline, LP?**

15 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a

16 petition for condemnation against our land so it could place its proposed pipeline

17 within an easement that it wanted to take from us on our land.

18 **Q: Did you defend yourself and your land in that condemnation action?**

19 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees

20 and expenses in our resistance of TransCanada's lawsuit against us.

21 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**

22 **incurred?**

23 A: No, they have not.

24 **Q: In its lawsuit against you, did TransCanada identify the amount of your**

25 **property that it wanted to take for its proposed pipeline?**

26 A: The lawsuit against us stated they would take the amount of property that is

27 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant

28 and equipment reasonably necessary to operate the pipeline.

1 **Q: Did TransCanada define what they meant by “property that is reasonably**
2 **necessary”?**

3 **A:** No, they did not.

4 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
5 **property portion of your land?**

6 **A:** Yes, they did.

7 **Q: Did TransCanada describe what rights it proposed to take related to the**
8 **eminent domain property on your land?**

9 **A:** Yes, they did.

10 **Q: What rights that they proposed to take did they describe?**

11 **A:** TransCanada stated that the eminent domain property will be used to “lay, relay,
12 operate, and maintain the pipeline and the plant and equipment reasonably
13 necessary to operate the pipeline, specifically including surveying, laying,
14 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
15 reconstructing, removing and abandoning one pipeline, together with all fittings,
16 cathodic protection equipment, pipeline markers, and all their equipment and
17 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
18 petroleum products, and all by-products thereof.”

19 **Q: Prior to filing an eminent domain lawsuit to take your land that**
20 **TransCanada identified, do you believe they attempted to negotiate in good**
21 **faith with you?**

22 **A:** No, I do not.

23 **Q: Did TransCanada at any time approach you with or deliver to you their**
24 **proposed easement and right-of-way agreement?**

25 **A:** Yes, they did.

26 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
27 **agreement, did you understand that they would be purchasing a fee title**
28 **interest in your property or that they were taking something else?**

1 A: I understood that they proposed to have the power to take both a temporary
2 construction easement that could last for a certain period of time and then also a
3 permanent easement which they described to be 50 feet across or in width, and
4 that would run the entire portion of my property from where a proposed pipeline
5 would enter my property until where it would exit the property.

6 Q: Is the document included with your testimony here as Attachment No. 3, a
7 true and accurate copy of TransCanada's proposed Easement and Right-of-
8 Way agreement that they included with their condemnation lawsuit against
9 you?

10 A: Yes, it is.

11 Q: Have you had an opportunity to review TransCanada's proposed Easement
12 and Right-of-Way agreement?

13 A: Yes, I have.

14 Q: What is your understanding of the significance of the Easement and Right-of-
15 Way agreement as proposed by TransCanada?

16 A: My understanding is that this is the document that will govern all of the rights and
17 obligations and duties as well as the limitations of what I can and cannot do and
18 how I and any future landowner and any person I invite to come onto my property
19 must behave as well as what TransCanada is and is not responsible for and how
20 they can use my land.

21 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
22 agreement do you have any concerns about any portions of it or any of the
23 language either included in the document or missing from the proposed
24 document?

25 A: Yes, I have a number of significant concerns and worries about the document and
26 how the language included and the language not included potentially negatively
27 impacts my land and thereby potentially negatively impacts my community and
28 my state.

1 **Q:** I would like you to walk the Commissioners through each and every one of
2 your concerns about TransCanada's proposed Easement and Right-of-Way
3 agreement so they can develop an understanding of how that language and
4 the terms of that contract, in your opinion, potentially negatively impacts you
5 and your land. So, if you can start at the beginning of that document and
6 let's work our way through it, okay?

7 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
8 Easement and Right-of-Way agreement and how it negatively could affect my
9 property rights and my economic interests.

10 **Q:** Okay, let's start with your first concern please.

11 **A:** The very first sentence talks about consideration or how much money they will
12 pay to compensate me for all of the known and unknown affects and all of the
13 rights I am giving up and for all the things they get to do to my land and for what
14 they will prevent me from doing on my land and they only will pay me one time at
15 the signing of the easement agreement. That is a huge problem.

16 **Q:** Explain to the Commissioners why that is a problem.

17 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
18 landowner because they want to have my land forever for use as they see fit so
19 they can make a daily profit from their customers. If I was to lease ground from
20 my neighbor I would typically pay twice a year every year as long as they granted
21 me the rights to use their land. That only makes sense – that is fair. If I was going
22 to rent a house in town I would typically pay monthly, every month until I gave up
23 my right to use that house. By TransCanada getting out on the cheap and paying
24 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
25 revenue collection on the money I would be paid and then pay taxes on and
26 contribute to this state and this country. It is money I would be putting back into
27 my local community both spending and stimulating the local economy and
28 generating more economic activity right here. Instead TransCanada's shareholders
29 keep all that money and it never finds its way to Nebraska.

Q: What is your next concern?

A: The first paragraph goes on to say Grantor, which is me the landowner, “does hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited partnership...” and I have no idea who that really is. I have no idea who is forcing this pipeline on us or who the owners of the entities are, or what are the assets backing this limited partnership, or who the general partner is, or who all the limited partners are, and who makes up the ownership of the these partners or the structure or any of the basic things you would want to know and understand if you would want to do business with such an outfit. According to TransCanada’s answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let’s continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada’s easement terms.

A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter called “Grantee”)...” and this concerns me because it would allow the easement to be transferred or sold to someone or some company or country or who knows what that I don’t know and who we may not want to do business with. This pipeline

1 would be a huge asset for TransCanada and if they can sell to the highest bidder
2 that could have terrible impacts upon all of Nebraska depending upon who may
3 buy it and I don't know of any safeguards in place for us or the State to veto or
4 have any say so in who may own, operate, or be responsible for this pipeline in the
5 future.

6 **Q: Do you think that type of uncertainty and lack of control over a major piece**
7 **of infrastructure crossing our State is in the public interest?**

8 **A:** No, certainly not, in fact, just the opposite.

9 **Q: What's next?**

10 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
11 really concerns me. Why does the easement and right-of-way have to be perpetual
12 and permanent? That is the question myself and my family want an answer to.
13 Perpetual to me is like forever and that doesn't make sense.

14 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

15 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
16 data proving there is a perpetual supply of tar sands. I am not aware in
17 TransCanada's application where it proves there is a perpetual necessity for this
18 pipeline. My understanding of energy infrastructure like wind towers is they have
19 a decommission plan and actually take the towers down when they become
20 obsolete or no longer needed. Nothing manmade lasts forever. My land however
21 will, and I want my family or future Nebraska families to have that land as
22 undisturbed as possible and it is not in my interest or the public interest of
23 Nebraska to be forced to give up perpetual and permanent rights in the land for
24 this specific kind of pipeline project.

25 **Q: Okay, what is your next concern?**

26 **A:** The easement language includes all these things TransCanada can do and it says
27 "...abandoning in place..." so they can just leave this pipeline under my ground
28 until the end of time just sitting there while they are not using it, but I am still
29 prevented from doing on my land and using my land what I would like. If I owned

1 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
2 there. It doesn't make sense and it scares me and it is not in my interest or the
3 public interest of Nebraska to allow this.

4 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
5 **right?**

6 **A:** Yes.

7 **Q: So now on the second page of the Easement what are your concerns?**

8 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
9 pipeline but has caveats that are undefined and ambiguous. The 24-month period
10 starts to run from the moment "actual pipeline installation activities" begin on
11 Landowners property. It appears that TransCanada would define this phrase as
12 needed. It would be wise to explain what types of TransCanada action constitutes
13 "installation activity" For instance, would the placement and storage of an
14 excavator or other equipment on or near the Easement property be an activity or
15 would earth have to be moved before the activity requirement is triggered. This
16 vague phrase is likely to lead to future disputes and litigation that is not in the best
17 interest of the welfare of Nebraska and would not protect property interests. The
18 24-months can also be extended in the case of "force majeure." My understanding
19 is that force majeure is often used to insulate a party to a contract when events
20 occur that are completely out of their control. In TransCanada's easement this is
21 expanded to include "without limitation...availability of labor and materials."
22 Extending this language to labor and materials is problematic because these are
23 two variables that TransCanada does have some or significant control over and to
24 allow extension of the 24-month period over events not truly out of the control of
25 TransCanada and without further provision for compensation for the Landowner is
26 not conducive to protection of property rights.

27 **Q: Okay, what is your next concern?**

28 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
29 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially

reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with

TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon of the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such

1 undefined and unilateral restrictions are not conducive to the protection of
2 property rights or economic interest.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
5 Landowner's land any debris of any kind without any input or power of
6 Landowner to demand an alternative method or location of debris disposal. Such
7 unilateral powers would negatively affect Landowners property are not conducive
8 to the protection of property rights or economic interest.

9 **Q: What is the next concern you have with the Easement language?**

10 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
11 "where rock is encountered" mean and why does TransCanada solely get to
12 determine whether or not this phrase is triggered. This phrase could be used to
13 justify installing the pipeline 24 inches beneath the surface. The ability to use this
14 provision to minimal locate the pipeline at a depth of 24 inches could negatively
15 affect Landowners property are not conducive to the protection of property rights.
16 A shallow pipeline is much more likely to become a danger and liability in the
17 future given farming operations and buried irrigation lines and other factors
18 common to the current typical agricultural uses of the land in question impacted
19 by TransCanada's preferred pipeline route.

20 **Q: What is the next concern you have with the Easement language?**

21 A: There are more vague concepts solely at the determination of TransCanada such as
22 "as nearly as practicable" and "pre-construction position" and "extent reasonably
23 possible." There is nothing here that defines this or provides a mechanism for
24 documenting or memorializing "pre-construction position" so as to minimize
25 costly legal battles or wasted Landowner time attempting to recreate the soil
26 condition on their fields or pasture. Such unilateral powers would negatively affect
27 Landowners property are not conducive to the protection of property rights or
28 economic interest.

29 **Q: What is the next concern you have with the Easement language?**

1 A: TransCanada maintains the unilateral right to abandon the pipeline and all
2 appurtenances thereto in place on, under, across, or through Nebraska land at any
3 time it chooses. There is no provision for Landowner compensation for such
4 abandonment nor any right for the Landowner to demand removal. Such unilateral
5 powers would negatively affect Landowners property are not conducive to the
6 protection of property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: TransCanada has the power to unilaterally move or modify the location of any
9 Easement area whether permanent or temporary at their sole discretion.
10 Regardless, if Landowner has taken prior steps relative to their property in
11 preparation or planning of TransCanada's taking of the initial easement area(s),
12 the language here does not require TransCanada to compensate the Landowner if
13 they decide to move the easement anywhere on Landowners property. Such
14 unilateral powers would negatively affect Landowners property are not conducive
15 to the protection of property rights or economic interests.

16 **Q: What is the next concern you have with the Easement language?**

17 A: The Easement requires that all of the burdens and restrictions upon Landowner to
18 transfer and be applicable to any future owner of the Land in question without the
19 ability of the future Landowner to modify or negotiate any of the language in
20 question to which it will be held to comply.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
23 Easement to any person, company, country, etc. at their sole discretion at anytime
24 to anyone. This also means that any buyer of the easement could do the same to a
25 third buyer and so on forever. There is no change of control or sale provision in
26 place to protect the Landowner or Nebraska or to provide compensation for such
27 change of control or ownership. It is not conducive to the protection of property
28 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 **A:** There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, "yield loss damages" should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada's proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline's**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 Q: Has TransCanada at any time offered to compensate you annually, such as
6 wind farm projects do, for the existence of their potential tar sands pipeline
7 across your property.

8 A: No, never.

9 Q: At any time did TransCanada present you with or request that you, as the
10 owner of the land in question, sign and execute a document called, "Advanced
11 Release of Damage Claims and Indemnity Agreement?"

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
14 "Advanced Release of Damage Claims and Indemnity Agreement?"

15 A: Yes, it is.

16 Q: What was your understanding of that document?

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 Q: Did you ever sign that document?

24 A: No, I did not.

25 Q: Why not?

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** At the beginning of your statement, you briefly described your property that
28 would be impacted by the potential Keystone XL Pipeline. I would like you to
29 give the Commissioners a sense of specifically how you believe the proposed

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: The current proposed route of the Keystone XL pipeline would cross a half mile of
9 our land consisting of equal parts pasture and row crop. It has been categorized
10 highly erodible by the U.S. Farm Service Agency. This means that any disturbance
11 to the ground results in constant monitoring and maintenance to protect it from
12 severe and catastrophic erosion. We would have to prevent and repair any damage
13 for as long the pipeline is there. According to the easement we would be forced to
14 sign, that could be forever since TransCanada is not responsible to remove it nor
15 return the land to its original state.

16 **Q: What else?**

17 A: Also according to the forced easement, we could be liable for damages and clean-
18 up when the pipeline leaks, resulting in permanent toxic contamination.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
23 or even bullied around and being made to feel scared that they did not have any
24 options but to sign whatever papers TransCanada told them they had to. I am
25 aware of folks being threatened that their land would be taken if they didn't follow
26 what TransCanada was saying. I am aware of tactics to get people to sign
27 easements that I don't believe have any place in Nebraska or anywhere such as
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 **A:** No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 **A:** Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 **A:** The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

ago it would have been hard to imagine all the advances that we have now or how things change. Because the Easement is forever and TransCanada gets the rights in my land forever we have to think with a very long term view. By placing their pipeline on under across and through my land that prevents future development which greatly negatively impacts future taxes and tax revenue that could have been generated by the County and State but now will not. When you look at the short blip of economic activity that the two years of temporary construction efforts may bring, that is far outweighed by the perpetual and forever loss of opportunity and restrictions TransCanada is forcing upon us and Nebraska.

Q: Do you have any concerns about the environmental impact of the proposed pipeline?

A: Yes, I do.

Q: What are some of those concerns?

A: As an affected land owner and Nebraskan, I am concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the environment of my land specifically, as well as the lands near my land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of my land, and the lands near and surrounding the proposed pipeline route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route shown here within Nebraska essentially
4 twins or parallels Keystone I. That is why this is included, to show TransCanada
5 has looked at the possibility of twinning which I believe is feasible.

6 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
7 **Application, and as found on Attachment No. 7, here to your testimony, is in**
8 **the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe that the Keystone mainline alternative route as shown on**
11 **Attachment No. 7 included with your testimony here is a major oil pipeline**
12 **route that is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe the Nebraska portion of the I-90 corridor alternative route,**
15 **specifically for the portion of the proposed pipeline within Nebraska as found**
16 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe there is any potential route for the proposed Keystone XL**
19 **Pipeline across, within, under, or through the State of Nebraska that is in the**
20 **public interest of the citizens of Nebraska?**

21 A: No, I do not.

22 **Q: Why do you hold that belief?**

23 A: Because there simply is no public interest based on all of the factors that I am
24 aware and that I have read and that I have studied that this Commission is to
25 consider that would establish that a for-profit foreign-owned pipeline that simply
26 crosses Nebraska because we are geographically in the way between where tar
27 sands are in Canada to where it wants to ship it to in Texas could ever be in the
28 public interest of Nebraskans. We derive no benefit from this project. It is not for
29 public use. Nebraska is simply in the way and when all considerations are taken in

1 there is no net benefit of any kind for Nebraska should this project be placed in our
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all
3 the negative impacts and concerns.

4 **Q:** What do you think about the applicant, TransCanada’s argument that it’s
5 preferred route for its proposed Keystone XL Pipeline is in the public interest
6 of Nebraska because it may bring temporary jobs during the construction
7 phase to Nebraska?

8 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
9 temporary or on a permanent basis, don’t come with a project that has all the
10 potential and foreseeable negative impacts, many of which we have discussed here
11 and other witnesses throughout the course of this hearing have and will discuss. If
12 I decide to hire and employ someone to help me out in my farming or ranching
13 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
14 to my land or my town or my county or my state. And I’ve hired someone who is
15 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
16 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
17 jobs are not created equal. Additionally, I understand from what I’m familiar with
18 from TransCanada’s own statements that the jobs numbers they originally touted
19 were determined to be a minute fraction of the permanent jobs that had been
20 projected. According to their answer to our Interrogatory No. 191, TransCanada
21 has created only thirty-four (34) jobs within Nebraska working specifically on
22 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
23 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
24 Further, according to their answer to Interrogatory No. 199, TransCanada would
25 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
26 constructed on its Preferred Route or its Mainline Alternative Route.

27 **Q:** Are you opposed to the preferred route of the proposed KXL Pipeline simply
28 because it would cross your land?

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 Q: Would you be happier if instead of crossing your land, this proposed pipeline
4 was to cross someone else's land?

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 Q: Do you think there is any intelligent route for the proposed Keystone XL
10 Pipeline to cross the state of Nebraska?

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 Q: What do you rely upon to make that statement?

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**
4 **this time you would like the Commissioners to understand?**

5 **A:** Yes. For a one-time fee this forced easement would give TransCanada the use of
6 our land forever. They are free to sell it at any time to anyone (foreign or
7 domestic), or to simply walk away at a time of their choosing, leaving a
8 dangerous, corroding, toxic structure for which they would not be held
9 responsible. This would not only devalue our property but could cause its
10 condemnation, rendering it useless to anyone. It is incomprehensible that a one-
11 time fee could be considered just compensation for this.

12 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
13 **like the Public Service Commissioners to consider in their review of**
14 **TransCanada's Application?**

15 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
16 document below but other things may come to me or my memory may be
17 refreshed and I will add and address those things at the time of the Hearing in
18 August and address any additional items at that time as is necessary. Additionally,
19 I have not had an adequate amount of time to receive and review all of
20 TransCanada's answers to our discovery and the discovery of others so it was
21 impossible to competently and completely react to that in my testimony here and I
22 reserve the right to also address anything related to discovery that has not yet
23 concluded as of the date I signed this document below. Lastly, certain documents
24 requested have not yet been produced by TransCanada and therefore I may have
25 additional thoughts on those I will also share at the hearing as needed.

26 **Q: What is it that you are requesting the Public Service Commissioners do in**
27 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
28 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. It simply does not make
13 sense to add yet another major oil pipeline crisscrossing our state creating new
14 pumping stations, creating new impacts on additional counties and communities
15 and going through all of the court processes with myself and other landowners like
16 me when this applicant already has relationships with the landowners, the towns
17 and the communities along Keystone I, and that Keystone I is firmly outside of the
18 sand hills and a significantly further portion away from the heart of the Ogallala
19 Aquifer than the preferred route or the Keystone mainline alternative route.

20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

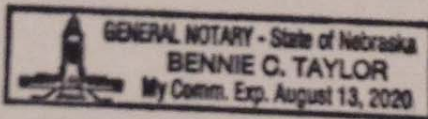
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**

Cheri Blocher
Cheri Blocher

Subscribed and Sworn to me before this 30th day of
May, 2017.

Bennie C. Taylor
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Michael Blocher in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Michael Blocher

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Farmer.

EXHIBIT

7

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1 **Q: If you are you married tell us your spouse's name please?**

2 A: Cheri Blocher.

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: Our land in Antelope County where my wife was born, has been in her family all
10 sixty-five years of her life. Here we are carrying on the tradition of raising corn,
11 soy beans, and American Quarter Horses began by her late father and mother.

12 **Q: Do you earn any income from this land?**

13 A: Yes.

14 **Q: Have you depended on the income from your land to support your livelihood**
15 **or the livelihood of your family?**

16 A: Yes.

17 **Q: Have you ever in the past or have you thought about in the future leasing all**
18 **or a portion of your land in question here?**

19 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
20 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
21 all the restrictions and risks and potential negative impacts to farming or ranching
22 operations as opposed to land that did not have those same risks. If I was looking
23 to lease or rent ground I would pay more for comparable non-pipeline land than I
24 would for comparable pipeline land and I think most folks would think the same
25 way. This is another negative economic impact that affects the landowner and the
26 county and the state and will forever and ever should TransCanada's preferred or
27 mainline alternative routes be approved. If they were to twin or closely parallel to
28 Keystone I the vast majority of landowners would be those that already have a
29 pipeline so there would be considerable less new incremental negative impacts.

1 **Q: Do you have similar concerns about selling the land?**
2 A: Well I hope not to have to sell the land in my lifetime but times change and you
3 never know what is around the corner and yes I am concerned that if another piece
4 of ground similar to mine were for sale and it did not have the pipeline and mine
5 did that I would have a lower selling price. I think this would be true for pipeline
6 ground on both the preferred and mainline alternative routes.

7 **Q: What is your intent with your land after you die?**
8 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
9 to come but I have thought about getting out if this pipeline were to come through.

10 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
11 **Pipeline would cross the land described above and owned by you?**
12 A: Yes.

13 **Q: Were you or an entity for which you are a member, shareholder, or director**
14 **previously sued by TransCanada Keystone Pipeline, LP?**
15 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
16 petition for condemnation against our land so it could place its proposed pipeline
17 within an easement that it wanted to take from us on our land.

18 **Q: Did you defend yourself and your land in that condemnation action?**
19 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
20 and expenses in our resistance of TransCanada's lawsuit against us.

21 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
22 **incurred?**
23 A: No, they have not.

24 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
25 **property that it wanted to take for its proposed pipeline?**
26 A: The lawsuit against us stated they would take the amount of property that is
27 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
28 and equipment reasonably necessary to operate the pipeline.

1 **Q:** Did TransCanada define what they meant by “property that is reasonably
2 necessary”?

3 **A:** No, they did not.

4 **Q:** Did TransCanada in its lawsuit against you, identify the eminent domain
5 property portion of your land?

6 **A:** Yes, they did.

7 **Q:** Did TransCanada describe what rights it proposed to take related to the
8 eminent domain property on your land?

9 **A:** Yes, they did.

10 **Q:** What rights that they proposed to take did they describe?

11 **A:** TransCanada stated that the eminent domain property will be used to “lay, relay,
12 operate, and maintain the pipeline and the plant and equipment reasonably
13 necessary to operate the pipeline, specifically including surveying, laying,
14 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
15 reconstructing, removing and abandoning one pipeline, together with all fittings,
16 cathodic protection equipment, pipeline markers, and all their equipment and
17 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
18 petroleum products, and all by-products thereof.”

19 **Q:** Prior to filing an eminent domain lawsuit to take your land that
20 TransCanada identified, do you believe they attempted to negotiate in good
21 faith with you?

22 **A:** No, I do not.

23 **Q:** Did TransCanada at any time approach you with or deliver to you their
24 proposed easement and right-of-way agreement?

25 **A:** Yes, they did.

26 **Q:** At the time you reviewed TransCanada’s easement and right-of-way
27 agreement, did you understand that they would be purchasing a fee title
28 interest in your property or that they were taking something else?

1 A: I understood that they proposed to have the power to take both a temporary
2 construction easement that could last for a certain period of time and then also a
3 permanent easement which they described to be 50 feet across or in width, and
4 that would run the entire portion of my property from where a proposed pipeline
5 would enter my property until where it would exit the property.

6 Q: Is the document included with your testimony here as Attachment No. 3, a
7 true and accurate copy of TransCanada's proposed Easement and Right-of-
8 Way agreement that they included with their condemnation lawsuit against
9 you?

10 A: Yes, it is.

11 Q: Have you had an opportunity to review TransCanada's proposed Easement
12 and Right-of-Way agreement?

13 A: Yes, I have.

14 Q: What is your understanding of the significance of the Easement and Right-of-
15 Way agreement as proposed by TransCanada?

16 A: My understanding is that this is the document that will govern all of the rights and
17 obligations and duties as well as the limitations of what I can and cannot do and
18 how I and any future landowner and any person I invite to come onto my property
19 must behave as well as what TransCanada is and is not responsible for and how
20 they can use my land.

21 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
22 agreement do you have any concerns about any portions of it or any of the
23 language either included in the document or missing from the proposed
24 document?

25 A: Yes, I have a number of significant concerns and worries about the document and
26 how the language included and the language not included potentially negatively
27 impacts my land and thereby potentially negatively impacts my community and
28 my state.

1 **Q:** I would like you to walk the Commissioners through each and every one of
2 your concerns about TransCanada's proposed Easement and Right-of-Way
3 agreement so they can develop an understanding of how that language and
4 the terms of that contract, in your opinion, potentially negatively impacts you
5 and your land. So, if you can start at the beginning of that document and
6 let's work our way through it, okay?

7 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
8 Easement and Right-of-Way agreement and how it negatively could affect my
9 property rights and my economic interests.

10 **Q:** Okay, let's start with your first concern please.

11 **A:** The very first sentence talks about consideration or how much money they will
12 pay to compensate me for all of the known and unknown affects and all of the
13 rights I am giving up and for all the things they get to do to my land and for what
14 they will prevent me from doing on my land and they only will pay me one time at
15 the signing of the easement agreement. That is a huge problem.

16 **Q:** Explain to the Commissioners why that is a problem.

17 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
18 landowner because they want to have my land forever for use as they see fit so
19 they can make a daily profit from their customers. If I was to lease ground from
20 my neighbor I would typically pay twice a year every year as long as they granted
21 me the rights to use their land. That only makes sense – that is fair. If I was going
22 to rent a house in town I would typically pay monthly, every month until I gave up
23 my right to use that house. By TransCanada getting out on the cheap and paying
24 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
25 revenue collection on the money I would be paid and then pay taxes on and
26 contribute to this state and this country. It is money I would be putting back into
27 my local community both spending and stimulating the local economy and
28 generating more economic activity right here. Instead TransCanada's shareholders
29 keep all that money and it never finds its way to Nebraska.

Q: What is your next concern?

A: The first paragraph goes on to say Grantor, which is me the landowner, “does hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited partnership...” and I have no idea who that really is. I have no idea who is forcing this pipeline on us or who the owners of the entities are, or what are the assets backing this limited partnership, or who the general partner is, or who all the limited partners are, and who makes up the ownership of the these partners or the structure or any of the basic things you would want to know and understand if you would want to do business with such an outfit. According to TransCanada’s answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let’s continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada’s easement terms.

A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter called “Grantee”)...” and this concerns me because it would allow the easement to be transferred or sold to someone or some company or country or who knows what that I don’t know and who we may not want to do business with. This pipeline

1 would be a huge asset for TransCanada and if they can sell to the highest bidder
2 that could have terrible impacts upon all of Nebraska depending upon who may
3 buy it and I don't know of any safeguards in place for us or the State to veto or
4 have any say so in who may own, operate, or be responsible for this pipeline in the
5 future.

6 **Q: Do you think that type of uncertainty and lack of control over a major piece**
7 **of infrastructure crossing our State is in the public interest?**

8 **A:** No, certainly not, in fact, just the opposite.

9 **Q: What's next?**

10 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
11 really concerns me. Why does the easement and right-of-way have to be perpetual
12 and permanent? That is the question myself and my family want an answer to.
13 Perpetual to me is like forever and that doesn't make sense.

14 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

15 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
16 data proving there is a perpetual supply of tar sands. I am not aware in
17 TransCanada's application where it proves there is a perpetual necessity for this
18 pipeline. My understanding of energy infrastructure like wind towers is they have
19 a decommission plan and actually take the towers down when they become
20 obsolete or no longer needed. Nothing manmade lasts forever. My land however
21 will, and I want my family or future Nebraska families to have that land as
22 undisturbed as possible and it is not in my interest or the public interest of
23 Nebraska to be forced to give up perpetual and permanent rights in the land for
24 this specific kind of pipeline project.

25 **Q: Okay, what is your next concern?**

26 **A:** The easement language includes all these things TransCanada can do and it says
27 "...abandoning in place..." so they can just leave this pipeline under my ground
28 until the end of time just sitting there while they are not using it, but I am still
29 prevented from doing on my land and using my land what I would like. If I owned

1 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
2 there. It doesn't make sense and it scares me and it is not in my interest or the
3 public interest of Nebraska to allow this.

4 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
5 **right?**

6 **A:** Yes.

7 **Q: So now on the second page of the Easement what are your concerns?**

8 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
9 pipeline but has caveats that are undefined and ambiguous. The 24-month period
10 starts to run from the moment "actual pipeline installation activities" begin on
11 Landowners property. It appears that TransCanada would define this phrase as
12 needed. It would be wise to explain what types of TransCanada action constitutes
13 "installation activity" For instance, would the placement and storage of an
14 excavator or other equipment on or near the Easement property be an activity or
15 would earth have to be moved before the activity requirement is triggered. This
16 vague phrase is likely to lead to future disputes and litigation that is not in the best
17 interest of the welfare of Nebraska and would not protect property interests. The
18 24-months can also be extended in the case of "force majeure." My understanding
19 is that force majeure is often used to insulate a party to a contract when events
20 occur that are completely out of their control. In TransCanada's easement this is
21 expanded to include "without limitation...availability of labor and materials."
22 Extending this language to labor and materials is problematic because these are
23 two variables that TransCanada does have some or significant control over and to
24 allow extension of the 24-month period over events not truly out of the control of
25 TransCanada and without further provision for compensation for the Landowner is
26 not conducive to protection of property rights.

27 **Q: Okay, what is your next concern?**

28 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
29 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially

reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with

TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such

undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as "as nearly as practicable" and "pre-construction position" and "extent reasonably possible." There is nothing here that defines this or provides a mechanism for documenting or memorializing "pre-construction position" so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

1 A: TransCanada maintains the unilateral right to abandon the pipeline and all
2 appurtenances thereto in place on, under, across, or through Nebraska land at any
3 time it chooses. There is no provision for Landowner compensation for such
4 abandonment nor any right for the Landowner to demand removal. Such unilateral
5 powers would negatively affect Landowners property are not conducive to the
6 protection of property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 A: TransCanada has the power to unilaterally move or modify the location of any
9 Easement area whether permanent or temporary at their sole discretion.
10 Regardless, if Landowner has taken prior steps relative to their property in
11 preparation or planning of TransCanada's taking of the initial easement area(s),
12 the language here does not require TransCanada to compensate the Landowner if
13 they decide to move the easement anywhere on Landowners property. Such
14 unilateral powers would negatively affect Landowners property are not conducive
15 to the protection of property rights or economic interests.

16 **Q: What is the next concern you have with the Easement language?**

17 A: The Easement requires that all of the burdens and restrictions upon Landowner to
18 transfer and be applicable to any future owner of the Land in question without the
19 ability of the future Landowner to modify or negotiate any of the language in
20 question to which it will be held to comply.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
23 Easement to any person, company, country, etc. at their sole discretion at anytime
24 to anyone. This also means that any buyer of the easement could do the same to a
25 third buyer and so on forever. There is no change of control or sale provision in
26 place to protect the Landowner or Nebraska or to provide compensation for such
27 change of control or ownership. It is not conducive to the protection of property
28 rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 **A:** There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, "yield loss damages" should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada's proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline's**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 Q: Has TransCanada at any time offered to compensate you annually, such as
6 wind farm projects do, for the existence of their potential tar sands pipeline
7 across your property.

8 A: No, never.

9 Q: At any time did TransCanada present you with or request that you, as the
10 owner of the land in question, sign and execute a document called, "Advanced
11 Release of Damage Claims and Indemnity Agreement?"

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
14 "Advanced Release of Damage Claims and Indemnity Agreement?"

15 A: Yes, it is.

16 Q: What was your understanding of that document?

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 Q: Did you ever sign that document?

24 A: No, I did not.

25 Q: Why not?

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** At the beginning of your statement, you briefly described your property that
28 would be impacted by the potential Keystone XL Pipeline. I would like you to
29 give the Commissioners a sense of specifically how you believe the proposed

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: The current proposed route of the Keystone XL pipeline would cross a half mile of
9 our land consisting of equal parts pasture and row crop. It has been categorized
10 highly erodible by the U.S. Farm Service Agency. This means that any disturbance
11 to the ground results in constant monitoring and maintenance to protect it from
12 severe and catastrophic erosion. We would have to prevent and repair any damage
13 for as long the pipeline is there. According to the easement we would be forced to
14 sign, that could be forever since TransCanada is not responsible to remove it nor
15 return the land to its original state.

16 **Q: What else?**

17 A: Also according to the forced easement, we could be liable for damages and clean-
18 up when the pipeline leaks, resulting in permanent toxic contamination.

19 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
20 **crude oil pipeline in its preferred location, or ultimate location across the**
21 **state of Nebraska?**

22 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
23 or even bullied around and being made to feel scared that they did not have any
24 options but to sign whatever papers TransCanada told them they had to. I am
25 aware of folks being threatened that their land would be taken if they didn't follow
26 what TransCanada was saying. I am aware of tactics to get people to sign
27 easements that I don't believe have any place in Nebraska or anywhere such as
28 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
29 landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 **A:** No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 **A:** Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 **A:** The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

ago it would have been hard to imagine all the advances that we have now or how things change. Because the Easement is forever and TransCanada gets the rights in my land forever we have to think with a very long term view. By placing their pipeline on under across and through my land that prevents future development which greatly negatively impacts future taxes and tax revenue that could have been generated by the County and State but now will not. When you look at the short blip of economic activity that the two years of temporary construction efforts may bring, that is far outweighed by the perpetual and forever loss of opportunity and restrictions TransCanada is forcing upon us and Nebraska.

Q: Do you have any concerns about the environmental impact of the proposed pipeline?

A: Yes, I do.

Q: What are some of those concerns?

A: As an affected land owner and Nebraskan, I am concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the environment of my land specifically, as well as the lands near my land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of my land, and the lands near and surrounding the proposed pipeline route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route shown here within Nebraska essentially
4 twins or parallels Keystone I. That is why this is included, to show TransCanada
5 has looked at the possibility of twinning which I believe is feasible.

6 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
7 **Application, and as found on Attachment No. 7, here to your testimony, is in**
8 **the public interest of Nebraska?**

9 A: No, I do not.

10 **Q: Do you believe that the Keystone mainline alternative route as shown on**
11 **Attachment No. 7 included with your testimony here is a major oil pipeline**
12 **route that is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe the Nebraska portion of the I-90 corridor alternative route,**
15 **specifically for the portion of the proposed pipeline within Nebraska as found**
16 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe there is any potential route for the proposed Keystone XL**
19 **Pipeline across, within, under, or through the State of Nebraska that is in the**
20 **public interest of the citizens of Nebraska?**

21 A: No, I do not.

22 **Q: Why do you hold that belief?**

23 A: Because there simply is no public interest based on all of the factors that I am
24 aware and that I have read and that I have studied that this Commission is to
25 consider that would establish that a for-profit foreign-owned pipeline that simply
26 crosses Nebraska because we are geographically in the way between where tar
27 sands are in Canada to where it wants to ship it to in Texas could ever be in the
28 public interest of Nebraskans. We derive no benefit from this project. It is not for
29 public use. Nebraska is simply in the way and when all considerations are taken in

1 there is no net benefit of any kind for Nebraska should this project be placed in our
2 state. Even if there was some arguable “benefit” it is not enough to outweigh all
3 the negative impacts and concerns.

4 **Q:** What do you think about the applicant, TransCanada’s argument that it’s
5 preferred route for its proposed Keystone XL Pipeline is in the public interest
6 of Nebraska because it may bring temporary jobs during the construction
7 phase to Nebraska?

8 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
9 temporary or on a permanent basis, don’t come with a project that has all the
10 potential and foreseeable negative impacts, many of which we have discussed here
11 and other witnesses throughout the course of this hearing have and will discuss. If
12 I decide to hire and employ someone to help me out in my farming or ranching
13 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
14 to my land or my town or my county or my state. And I’ve hired someone who is
15 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
16 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
17 jobs are not created equal. Additionally, I understand from what I’m familiar with
18 from TransCanada’s own statements that the jobs numbers they originally touted
19 were determined to be a minute fraction of the permanent jobs that had been
20 projected. According to their answer to our Interrogatory No. 191, TransCanada
21 has created only thirty-four (34) jobs within Nebraska working specifically on
22 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
23 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
24 Further, according to their answer to Interrogatory No. 199, TransCanada would
25 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
26 constructed on its Preferred Route or its Mainline Alternative Route.

27 **Q:** Are you opposed to the preferred route of the proposed KXL Pipeline simply
28 because it would cross your land?

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 Q: Would you be happier if instead of crossing your land, this proposed pipeline
4 was to cross someone else's land?

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 Q: Do you think there is any intelligent route for the proposed Keystone XL
10 Pipeline to cross the state of Nebraska?

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 Q: What do you rely upon to make that statement?

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**
4 **this time you would like the Commissioners to understand?**

5 **A:** Yes. For a one-time fee this forced easement would give TransCanada the use of
6 our land forever. They are free to sell it at any time to anyone (foreign or
7 domestic), or to simply walk away at a time of their choosing, leaving a
8 dangerous, corroding, toxic structure for which they would not be held
9 responsible. This would not only devalue our property but could cause its
10 condemnation, rendering it useless to anyone. It is incomprehensible that a one-
11 time fee could be considered just compensation for this.

12 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
13 **like the Public Service Commissioners to consider in their review of**
14 **TransCanada's Application?**

15 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
16 document below but other things may come to me or my memory may be
17 refreshed and I will add and address those things at the time of the Hearing in
18 August and address any additional items at that time as is necessary. Additionally,
19 I have not had an adequate amount of time to receive and review all of
20 TransCanada's answers to our discovery and the discovery of others so it was
21 impossible to competently and completely react to that in my testimony here and I
22 reserve the right to also address anything related to discovery that has not yet
23 concluded as of the date I signed this document below. Lastly, certain documents
24 requested have not yet been produced by TransCanada and therefore I may have
25 additional thoughts on those I will also share at the hearing as needed.

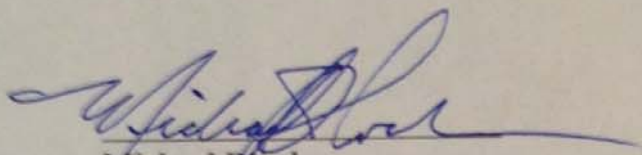
26 **Q: What is it that you are requesting the Public Service Commissioners do in**
27 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
28 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. It simply does not make
13 sense to add yet another major oil pipeline crisscrossing our state creating new
14 pumping stations, creating new impacts on additional counties and communities
15 and going through all of the court processes with myself and other landowners like
16 me when this applicant already has relationships with the landowners, the towns
17 and the communities along Keystone I, and that Keystone I is firmly outside of the
18 sand hills and a significantly further portion away from the heart of the Ogallala
19 Aquifer than the preferred route or the Keystone mainline alternative route.

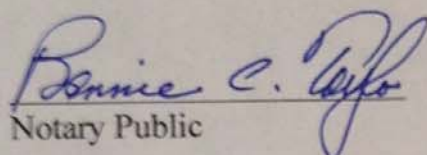
20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

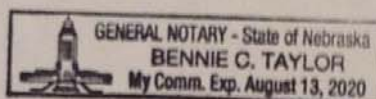
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**


Michael Blocher

Subscribed and Sworn to me before this 30th day of May, 2017.


Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Bonnie Brauer in Support of Landowner
Intervenors**

State of Indiana)
) ss.
Boone County)

1 **Q: Please state your name.**

2 A: My name is Bonnie Brauer.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Polk County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you have children how many do you have?**

16 A: 2

EXHIBIT

8

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1 **Q:** If you have grandchildren how many do you have?

2 A: 6

3 **Q:** Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
4 and or your family?

5 A. Yes.

6 **Q:** How long the land has been in your family?

7 A: My brother, Leonard Skoglund, and I inherited the land from our Great Aunt Edith
8 Benson, the sister of our maternal grandfather, who had no children. She was a
9 Swedish immigrant who, along with her husband Ed, took advantage of the
10 Homestead Act of 1862 which gave 160 acres to those who build a home on it and
11 farm it for at least 5 years. Thus we each have 80 acres that is farmed jointly by a
12 third party.

13 **Q:** Do you earn any income from this land?

14 A: Yes.

15 **Q:** Have you depended on the income from your land to support your livelihood
16 or the livelihood of your family?

17 A: Yes.

18 **Q:** Have you ever in the past or have you thought about in the future leasing all
19 or a portion of your land in question here?

20 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
21 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
22 all the restrictions and risks and potential negative impacts to farming or ranching
23 operations as opposed to land that did not have those same risks. If I was looking
24 to lease or rent ground I would pay more for comparable non-pipeline land than I
25 would for comparable pipeline land and I think most folks would think the same
26 way. This is another negative economic impact that affects the landowner and the
27 county and the state and will forever and ever should TransCanada's preferred or
28 mainline alternative routes be approved. If they were to twin or closely parallel to

1 Keystone I the vast majority of landowners would be those that already have a
2 pipeline so there would be considerable less new incremental negative impacts.

3 **Q: Do you have similar concerns about selling the land?**

4 A: Well I hope not to have to sell the land in my lifetime but times change and you
5 never know what is around the corner and yes I am concerned that if another piece
6 of ground similar to mine were for sale and it did not have the pipeline and mine
7 did that I would have a lower selling price. I think this would be true for pipeline
8 ground on both the preferred and mainline alternative routes.

9 **Q: What is your intent with your land after you die?**

10 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
11 to come but I have thought about getting out if this pipeline were to come through.

12 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
13 Pipeline would cross the land described above and owned by you?**

14 A: Yes.

15 **Q: Were you or an entity for which you are a member, shareholder, or director
16 previously sued by TransCanada Keystone Pipeline, LP?**

17 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
18 petition for condemnation against our land so it could place its proposed pipeline
19 within an easement that it wanted to take from us on our land.

20 **Q: Did you defend yourself and your land in that condemnation action?**

21 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
22 and expenses in our resistance of TransCanada's lawsuit against us.

23 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
24 incurred?**

25 A: No, they have not.

26 **Q: In its lawsuit against you, did TransCanada identify the amount of your
27 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?

6 A: No, they did not.

7 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?

9 A: Yes, they did.

10 Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?

12 A: Yes, they did.

13 Q: What rights that they proposed to take did they describe?

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?

25 A: No, I do not.

26 Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?

28 A: Yes, they did.

1 **Q:** At the time you reviewed TransCanada's easement and right-of-way
2 agreement, did you understand that they would be purchasing a fee title
3 interest in your property or that they were taking something else?

4 **A:** I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q:** Is the document included with your testimony here as Attachment No. 3, a
10 true and accurate copy of TransCanada's proposed Easement and Right-of-
11 Way agreement that they included with their condemnation lawsuit against
12 you?

13 **A:** Yes, it is.

14 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
15 and Right-of-Way agreement?

16 **A:** Yes, I have.

17 **Q:** What is your understanding of the significance of the Easement and Right-of-
18 Way agreement as proposed by TransCanada?

19 **A:** My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
25 agreement do you have any concerns about any portions of it or any of the
26 language either included in the document or missing from the proposed
27 document?

28 **A:** Yes, I have a number of significant concerns and worries about the document and
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 **A:** The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows
2 what that I don't know and who we may not want to do business with. This
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest
4 bidder that could have terrible impacts upon all of Nebraska depending upon who
5 may buy it and I don't know of any safeguards in place for us or the State to veto
6 or have any say so in who may own, operate, or be responsible for this pipeline in
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 **A:** No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 **A:** The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 **A: Yes.**

9 **Q: So now on the second page of the Easement what are your concerns?**

10 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 Q: Is there any specific event or example you are aware of that makes this
22 concern more real for you?

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as Attachment No. 4.

29 Q: What is your next concern with the Easement language?

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 **A:** There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined and ambiguous terms are
8 as follows:

- 9 i. "pipeline installation activities"
- 10 ii. "availability of labor and materials"
- 11 iii. "commercially reasonable costs and expenses"
- 12 iv. "reasonably anticipated and foreseeable costs and expenses"
- 13 v. "yield loss damages"
- 14 vi. "diminution in the value of the property"
- 15 vii. "substantially same condition"
- 16 viii. "an actual or potential hazard"
- 17 ix. "efficient"
- 18 x. "convenient"
- 19 xi. "endangered"
- 20 xii. "obstructed"
- 21 xiii. "injured"
- 22 xiv. "interfered with"
- 23 xv. "impaired"
- 24 xvi. "suitable crossings"
- 25 xvii. "where rock is encountered"
- 26 xviii. "as nearly as practicable"
- 27 xix. "pre-construction position"
- 28 xx. "pre-construction grade"
- 29 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, "yield loss damages" should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada's proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline's**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 Q: Has TransCanada at any time offered to compensate you annually, such as
6 wind farm projects do, for the existence of their potential tar sands pipeline
7 across your property.

8 A: No, never.

9 Q: At any time did TransCanada present you with or request that you, as the
10 owner of the land in question, sign and execute a document called, "Advanced
11 Release of Damage Claims and Indemnity Agreement?"

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
14 "Advanced Release of Damage Claims and Indemnity Agreement?"

15 A: Yes, it is.

16 Q: What was your understanding of that document?

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 Q: Did you ever sign that document?

24 A: No, I did not.

25 Q: Why not?

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** Do you have any concerns TransCanada's fitness as an applicant for a major
28 crude oil pipeline in its preferred location, or ultimate location across the
29 state of Nebraska?

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 Q: **Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 Q: **Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 Q: **Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
18 easement must be addressed in order for the Commission to truly consider
19 property rights, economic interests, the welfare of Nebraska, and the balancing of
20 the proposed routes against all they will affect and impact.

21 **Q: Do you have any concerns about the environmental impact of the proposed**
22 **pipeline?**

23 A: Yes, I do.

24 **Q: What are some of those concerns?**

25 A: As an affected land owner and Nebraskan, I am concerned that any construction,
26 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
27 a detrimental impact upon the environment of my land specifically, as well as the
28 lands near my land and surrounding the proposed pipeline route.

29 **Q: Do you have any other environmental concerns?**

1 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
2 construction and/or maintenance and operation. I am concerned about spills and
3 leaks that TransCanada has had in the past and will have in the future. This could
4 be catastrophic to my operations or others and to my county and the State.

5 Q: Do you have any thoughts regarding if there would be an impact upon the
6 natural resources on or near your property due to the proposed pipeline?

7 A: Yes, I believe that any construction, operation, and/or maintenance of the
8 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
9 resources of my land, and the lands near and surrounding the proposed pipeline
10 route.

11 Q: Do you have any worries about potential impacts from the proposed pipeline
12 to the soil of your land, or land near you?

13 A: Yes, I believe that any construction, operation, and/or maintenance of the
14 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
15 land, as well as land along and surrounding the proposed pipeline route. This
16 includes, but is not limited to, the reasons that we discussed above of disturbing
17 the soil composition and makeup as it has naturally existed for thousands and
18 millions of years during the construction process, and any future maintenance or
19 removal process. I'm gravely concerned about the fertility and the loss of
20 economic ability of my property to grow the crops, or grow the grasses, or grow
21 whatever it is at that time they exist on my property or that I may want to grow in
22 the future, or that a future owner may want to grow. The land will never be the
23 same from as it exists now undisturbed to after it is trenched up for the proposed
24 pipeline.

25 Q: Do you have any concerns about the potential impact of the proposed pipeline
26 upon the groundwater over your land, or surrounding lands?

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the
29 groundwater of not only under my land, but also near and surrounding the pipeline

1 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
2 simple and it is simply too valuable to our State and the country to put at
3 unreasonable risk.

4 **Q: Do you have any concern about the potential impact of the proposed pipeline**
5 **upon the surface water on, or near or around your land?**

6 A: Yes, I have significant concerns that any construction, operation, and/or
7 maintenance of the proposed Keystone XL Pipeline would have detrimental
8 impact upon the surface water of not only within my property boundary, but along
9 and near and surrounding the pipeline route, and in fact, across the state of
10 Nebraska.

11 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
12 **upon the wildlife and plants, other than your growing crops on or near your**
13 **land?**

14 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
15 the proposed Keystone XL Pipeline would have a detrimental impact upon the
16 wildlife and the plants, not only that are located on or can be found upon my land,
17 but also near and along the proposed pipeline route.

18 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
19 **fair market value of your land?**

20 A: Yes, I do. I am significantly concerned about how the existence of the proposed
21 pipeline underneath and across and through my property will negatively affect the
22 fair market value at any point in the future, especially at that point in which I
23 would need to sell the property, or someone in my family would need to sell the
24 property. I do not believe, and certainly would not be willing to pay, the same
25 price for land that had the pipeline located on it, versus land that did not. I hope
26 there is never a point where I'm in a position where I have to sell and have to
27 realize as much value as I can out of my land. But because it is my single largest
28 asset, I'm gravely concerned that the existence of the proposed Keystone XL
29 Pipeline upon my land will affect a buyer's willingness to pay as much as they

1 would've paid and as much as I could've received, if the pipeline were not upon
2 my property. There are just too many risks, unknowns, impacts and uncertainties,
3 not to mention all of the rights you give up by the nature of having the pipeline
4 due to having the easement that we have previously discussed, for any reasonable
5 person to think that the existence of the pipeline would not negatively affect my
6 property's value.

7 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
8 **testimony?**

9 A: Yes, I have.

10 **Q: Where have you seen that before?**

11 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
12 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
13 believe the portion of the alternative route in Nebraska essentially twins or
14 parallels Keystone I.

15 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
16 **Application, and as found on Attachment No. 7, here to your testimony, is in**
17 **the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe that the Keystone mainline alternative route as shown on**
20 **Attachment No. 7 included with your testimony here is a major oil pipeline**
21 **route that is in the public interest of Nebraska?**

22 A: No, I do not.

23 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
24 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with from TransCanada’s own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to our Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. However, if
20 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
21 had to go somewhere in the state of Nebraska, the only intelligent route I believe
22 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
23 preferred route and the mainline alternative routes are economic liabilities our
24 state cannot risk.

25 **Q: What do you rely upon to make that statement?**

26 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
27 already exists in that area is reason enough as it is not in our best interest or the
28 public interests to have more major oil pipelines crisscrossing our state. Second,
29 they have all the infrastructure already there in terms of relationships with the

1 counties and local officials and first responders along that route. Third, they have
2 already obtained easements from all the landowners along that route and have
3 relationships with them. Fourth, that route avoids our most sensitive soils, the
4 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
5 Aquifer. Sixth, they have already studied that route and previously offered it as an
6 alternative. Seventh, it just makes the most sense that as a state we would have
7 some intelligent policy of energy corridors and co-locating this type of
8 infrastructure near each other.

9 **Q: Do you have any other concerns you would like to reiterate or can think of at**
10 **this time you would like the Commissioners to understand?**

11 **A:** Yes. We have concerns on potential harm to our property from a TransCanada
12 pipeline leak or break or rupture and not only to the leak itself but all the
13 surrounding activities required to address that issue and remediate.

14 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
15 **like the Public Service Commissioners to consider in their review of**
16 **TransCanada's Application?**

17 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
18 document below but other things may come to me or my memory may be
19 refreshed and I will add and address those things at the time of the Hearing in
20 August and address any additional items at that time as is necessary. Additionally,
21 I have not had an adequate amount of time to receive and review all of
22 TransCanada's answers to our discovery and the discovery of others so it was
23 impossible to competently and completely react to that in my testimony here and I
24 reserve the right to also address anything related to discovery that has not yet
25 concluded as of the date I signed this document below. Lastly, certain documents
26 requested have not yet been produced by TransCanada and therefore I may have
27 additional thoughts on those I will also share at the hearing as needed.

1 **Q: What is it that you are requesting the Public Service Commissioners do in**
2 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
3 **across Nebraska?**

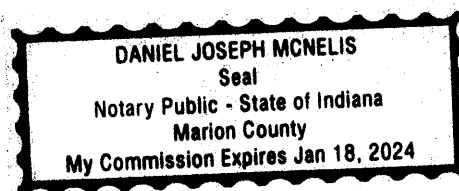
4 A: I am respectfully and humbly requesting that the Commissioners think far beyond
5 a temporary job spike that this project may bring to a few counties and beyond the
6 relatively small amount of taxes this proposed foreign pipeline would possibly
7 generate. And, instead think about the perpetual and forever impacts of this
8 pipeline as it would have on the landowners specifically, first and foremost, but
9 also thereby upon the entire state of Nebraska, and to determine that neither the
10 preferred route nor the Keystone mainline alternative route are in the public
11 interest of the citizens of the state of Nebraska. And if the Commissioners were
12 inclined to modify TransCanada's proposed routes and were to be inclined to grant
13 an application for a route in Nebraska, that the only potential route that would
14 make any intelligent sense whatsoever would be twinning or near paralleling of
15 the proposed KXL with the existing Keystone I pipeline. The point of including
16 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
17 considered by TransCanada before. It simply does not make sense to add yet
18 another major oil pipeline crisscrossing our state creating new pumping stations,
19 creating new impacts on additional counties and communities and going through
20 all of the court processes with myself and other landowners like me when this
21 applicant already has relationships with the landowners, the towns and the
22 communities along Keystone I, and that Keystone I is firmly outside of the sand
23 hills and a significantly further portion away from the heart of the Ogallala
24 Aquifer than the preferred route or the Keystone mainline alternative route.

25 **Q: Are all of your statements in your testimony provided above true and**
26 **accurate as of the date you signed this document to the best of your**
27 **knowledge?**

28 A: Yes, they are.

1 **Q:** Thank you, I have no further questions at this time and reserve the right to
2 ask you additional questions at the August 2017 Hearing.

Bonnie Brauer
Bonnie Brauer



Subscribed and Sworn to me before this 26th day of May, 2017.

Daniel Joseph McNelis
Notary Public

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Lonnie “L.A.” Breiner in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Lonnie Breiner.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Sandra Breiner.

EXHIBIT

9

exhibitsticker.com

1 **Q:** Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
2 and or your family?

3 A: Yes.

4 **Q:** Do you earn any income from this land?

5 A: Yes.

6 **Q:** Have you depended on the income from your land to support your livelihood
7 or the livelihood of your family?

8 A: Yes.

9 **Q:** Have you ever in the past or have you thought about in the future leasing all
10 or a portion of your land in question here?

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q:** Do you have similar concerns about selling the land?

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q:** What is your intent with your land after you die?

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director**
7 **previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
15 **incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
18 **property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably**
23 **necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
26 **property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the**
29 **eminent domain property on your land?**

1 A: Yes, they did.

2 Q: What rights that they proposed to take did they describe?

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 Q: Prior to filing an eminent domain lawsuit to take your land that
12 TransCanada identified, do you believe they attempted to negotiate in good
13 faith with you?

14 A: No, I do not.

15 Q: Did TransCanada at any time approach you with or deliver to you their
16 proposed easement and right-of-way agreement?

17 A: Yes, they did.

18 Q: At the time you reviewed TransCanada’s easement and right-of-way
19 agreement, did you understand that they would be purchasing a fee title
20 interest in your property or that they were taking something else?

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 Q: Is the document included with your testimony here as Attachment No. 3, a
27 true and accurate copy of TransCanada’s proposed Easement and Right-of-
28 Way agreement that they included with their condemnation lawsuit against
29 you?

1 A: Yes, it is.

2 Q: Have you had an opportunity to review TransCanada's proposed Easement
3 and Right-of-Way agreement?

4 A: Yes, I have.

5 Q: What is your understanding of the significance of the Easement and Right-of-
6 Way agreement as proposed by TransCanada?

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
13 agreement do you have any concerns about any portions of it or any of the
14 language either included in the document or missing from the proposed
15 document?

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 Q: I would like you to walk the Commissioners through each and every one of
21 your concerns about TransCanada's proposed Easement and Right-of-Way
22 agreement so they can develop an understanding of how that language and
23 the terms of that contract, in your opinion, potentially negatively impacts you
24 and your land. So, if you can start at the beginning of that document and
25 let's work our way through it, okay?

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 Q: Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow their easement to be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 A: No, they have not.

5 Q: Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 A: No, they have not.

9 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 A: Yes, I am.

12 Q: What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 Q: Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 A: No, they have not.

21 Q: Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 **A:** No, it has not.

7 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q:** **Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q:** **Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q:** **Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

1 **Q:** Do you believe the fact that you pay property taxes on your land would be
2 enough to qualify you to have the power of eminent domain to take land of
3 your neighbors or other people in your county, or other people across the
4 state of Nebraska?

5 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q:** Have you at any time ever employed any person other than yourself?

8 **A:** Well, yes I have.

9 **Q:** Do you believe that the fact that you have, at some point in your life,
10 employed one or more other persons entitle you to any special treatment or
11 consideration above and beyond any other Nebraskan that has also employed
12 one or more persons?

13 **A:** No, of course not.

14 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
15 have at one point employed another person within this state, entitles you to
16 preferential treatment or consideration of any kind?

17 **A:** No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q:** At the beginning of your statement, you briefly described your property that
20 would be impacted by the potential Keystone XL Pipeline. I would like you to
21 give the Commissioners a sense of specifically how you believe the proposed
22 Keystone XL Pipeline and its preferred route, which proposes to go across
23 your land, how it would in your opinion based on your knowledge,
24 experience, and background of your land, affect it. So please share with the
25 Commissioners the characteristics of your land that you believe is important
26 for them to understand, while they evaluate TransCanada's application for a
27 route for its proposed pipeline to cross Nebraska and across your land,
28 specifically.

1 A: Our farms with electric irrigation systems have schedules of on and off time to
2 irrigate so what will happen when the pipeline uses a lot of our electricity? Also
3 our roads are not good enough for the large trucks and heavy equipment needed to
4 put the pipeline in. all the extra people will also tax our law enforcement people.
5 We don't need more temporary jobs, which it won't provide anyway; we just need
6 someone who will work – every paper is full of help wanted ads.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to our Interrogatory No. 211, TransCanada only
22 owns and operates one (1) major oil pipeline. They simply do not have the
23 experience with this type of pipeline and that scares me. There are others but that
24 is what I can recollect at this time and if I remember more or my recollection is
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**
2 **proposed pipeline across your affected land would prevent construction of**
3 **future structures upon the portion of your land affected by the proposed**
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of
6 structures directly across or touching the easement, and it would be unwise and I
7 would be uncomfortable to build anything near the easement for fear of being
8 blamed in the future should any damage or difficulty result on my property in
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,
14 and having the restrictions and limiting my ability to develop my land in certain
15 ways presents a huge negative economic impact on myself, my family, and any
16 potential future owner of the property. You have no idea how I or the future owner
17 may want to use this land in the future or the other land across Nebraska
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
19 ago it would have been hard to imagine all the advances that we have now or how
20 things change. Because the Easement is forever and TransCanada gets the rights in
21 my land forever we have to think with a very long term view. By placing their
22 pipeline on under across and through my land that prevents future development
23 which greatly negatively impacts future taxes and tax revenue that could have
24 been generated by the County and State but now will not. When you look at the
25 short blip of economic activity that the two years of temporary construction efforts
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
5 a detrimental impact upon the environment of my land specifically, as well as the
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
9 construction and/or maintenance and operation. I am concerned about spills and
10 leaks that TransCanada has had in the past and will have in the future. This could
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the**
13 **natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
16 resources of my land, and the lands near and surrounding the proposed pipeline
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline**
19 **to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
22 land, as well as land along and surrounding the proposed pipeline route. This
23 includes, but is not limited to, the reasons that we discussed above of disturbing
24 the soil composition and makeup as it has naturally existed for thousands and
25 millions of years during the construction process, and any future maintenance or
26 removal process. I'm gravely concerned about the fertility and the loss of
27 economic ability of my property to grow the crops, or grow the grasses, or grow
28 whatever it is at that time they exist on my property or that I may want to grow in
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the
7 groundwater of not only under my land, but also near and surrounding the pipeline
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
9 simple and it is simply too valuable to our State and the country to put at
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or
14 maintenance of the proposed Keystone XL Pipeline would have detrimental
15 impact upon the surface water of not only within my property boundary, but along
16 and near and surrounding the pipeline route, and in fact, across the state of
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
19 **upon the wildlife and plants, other than your growing crops on or near your**
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 wildlife and the plants, not only that are located on or can be found upon my land,
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the
2 property. I do not believe, and certainly would not be willing to pay, the same
3 price for land that had the pipeline located on it, versus land that did not. I hope
4 there is never a point where I'm in a position where I have to sell and have to
5 realize as much value as I can out of my land. But because it is my single largest
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they
8 would've paid and as much as I could've received, if the pipeline were not upon
9 my property. There are just too many risks, unknowns, impacts and uncertainties,
10 not to mention all of the rights you give up by the nature of having the pipeline
11 due to having the easement that we have previously discussed, for any reasonable
12 person to think that the existence of the pipeline would not negatively affect my
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
15 **testimony?**

16 **A:** Yes, I have.

17 **Q: Where have you seen that before?**

18 **A:** That is a map I think I first saw a couple years ago that shows the Keystone XL
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
20 believe the portion of the alternative route in Nebraska essentially twins or
21 parallels Keystone I.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**
24 **the public interest of Nebraska?**

25 **A:** No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**
28 **route that is in the public interest of Nebraska?**

29 **A:** No, I do not.

Q: Do you believe the portion of the proposed pipeline within Nebraska as found in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe there is any potential route for the proposed Keystone XL Pipeline across, within, under, or through the State of Nebraska that is in the public interest of the citizens of Nebraska?

A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is

1 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
2 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
3 jobs are not created equal. Additionally, I understand from what I'm familiar with
4 from TransCanada's own statements that the jobs numbers they originally touted
5 were determined to be a minute fraction of the permanent jobs that had been
6 projected. According to their answer to our Interrogatory No. 191, TransCanada
7 has created only thirty-four (34) jobs within Nebraska working specifically on
8 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
9 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
10 Further, according to their answer to Interrogatory No. 199, TransCanada would
11 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
12 constructed on its Preferred Route or its Mainline Alternative Route.

13 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
14 **because it would cross your land?**

15 A: No, absolutely not. I am opposed to this project because it is not in the public
16 interest, neither within my community nor within our state.

17 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
18 **was to cross someone else's land?**

19 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
20 the fear and anxiety and potential foreseeable risks and negative impacts that this
21 type of a project carrying this type of product brings foisted upon anyone in this
22 state or any other state.

23 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
24 **Pipeline to cross the state of Nebraska?**

25 A: I don't believe there is an intelligent route because as I have stated I don't believe
26 this project anywhere within Nebraska is within the public interest. However, if
27 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
28 had to go somewhere in the state of Nebraska, the only intelligent route I believe
29 would be to twin or closely parallel the existing Keystone I Pipeline. Both the

1 preferred route and the mainline alternative routes are economic liabilities our
2 state cannot risk.

3 **Q: What do you rely upon to make that statement?**

4 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
5 already exists in that area is reason enough as it is not in our best interest or the
6 public interests to have more major oil pipelines crisscrossing our state. Second,
7 they have all the infrastructure already there in terms of relationships with the
8 counties and local officials and first responders along that route. Third, they have
9 already obtained easements from all the landowners along that route and have
10 relationships with them. Fourth, that route avoids our most sensitive soils, the
11 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
12 Aquifer. Sixth, they have already studied that route and previously offered it as an
13 alternative. Seventh, it just makes the most sense that as a state we would have
14 some intelligent policy of energy corridors and co-locating this type of
15 infrastructure near each other.

16 **Q: Do you have any other concerns you would like to reiterate or can think of at
17 this time you would like the Commissioners to understand?**

18 A: Yes. The pipeline still crosses the sand hills and the aquifer, which is Nebraska's
19 greatest resource. Millions of people rely on this good water and it would be a
20 great disaster if pollution occurred. The soil here is very sandy and once the top
21 soil and ground cover is disturbed you never get it back to natural. It will blow and
22 wash; we have fought blow-outs for years.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would
24 like the Public Service Commissioners to consider in their review of
25 TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this
27 document below but other things may come to me or my memory may be
28 refreshed and I will add and address those things at the time of the Hearing in
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of
2 TransCanada's answers to our discovery and the discovery of others so it was
3 impossible to competently and completely react to that in my testimony here and I
4 reserve the right to also address anything related to discovery that has not yet
5 concluded as of the date I signed this document below. Lastly, certain documents
6 requested have not yet been produced by TransCanada and therefore I may have
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: Does Attachment No. 8 here contain other documents you are competent to**
9 **speak about that you wish to be part of your testimony and to discuss in more**
10 **detail as needed at the August 2017 Hearing?**

11 A: Yes.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

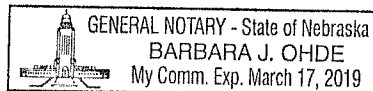
8 **A: Yes, they are.**

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

Lonnie G Breiner
Lonnie Breiner

Subscribed and Sworn to me before this 30 day of May, 2017.

Barbara J. Ohde
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Sandra Breiner in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Sandra Breiner.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: Lonnie "L.A." Breiner.

EXHIBIT

10

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1 **Q:** **Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q:** **Do you earn any income from this land?**

5 A: Yes.

6 **Q:** **Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q:** **Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q:** **Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q:** **What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director**
7 **previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
15 **incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
18 **property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably**
23 **necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
26 **property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the**
29 **eminent domain property on your land?**

1 A: Yes, they did.

2 Q: What rights that they proposed to take did they describe?

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 Q: Prior to filing an eminent domain lawsuit to take your land that
12 TransCanada identified, do you believe they attempted to negotiate in good
13 faith with you?

14 A: No, I do not.

15 Q: Did TransCanada at any time approach you with or deliver to you their
16 proposed easement and right-of-way agreement?

17 A: Yes, they did.

18 Q: At the time you reviewed TransCanada’s easement and right-of-way
19 agreement, did you understand that they would be purchasing a fee title
20 interest in your property or that they were taking something else?

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 Q: Is the document included with your testimony here as Attachment No. 3, a
27 true and accurate copy of TransCanada’s proposed Easement and Right-of-
28 Way agreement that they included with their condemnation lawsuit against
29 you?

1 A: Yes, it is.

2 Q: Have you had an opportunity to review TransCanada's proposed Easement
3 and Right-of-Way agreement?

4 A: Yes, I have.

5 Q: What is your understanding of the significance of the Easement and Right-of-
6 Way agreement as proposed by TransCanada?

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
13 agreement do you have any concerns about any portions of it or any of the
14 language either included in the document or missing from the proposed
15 document?

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 Q: I would like you to walk the Commissioners through each and every one of
21 your concerns about TransCanada's proposed Easement and Right-of-Way
22 agreement so they can develop an understanding of how that language and
23 the terms of that contract, in your opinion, potentially negatively impacts you
24 and your land. So, if you can start at the beginning of that document and
25 let's work our way through it, okay?

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 Q: Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow their easement to be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at any time
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 A: No, they have not.

5 Q: Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 A: No, they have not.

9 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 A: Yes, I am.

12 Q: What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 Q: Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 A: No, they have not.

21 Q: Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 **A:** No, it has not.

7 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q:** **Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q:** **Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q:** **Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

1 **Q:** Do you believe the fact that you pay property taxes on your land would be
2 enough to qualify you to have the power of eminent domain to take land of
3 your neighbors or other people in your county, or other people across the
4 state of Nebraska?

5 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
6 I expect an award for or any type of special consideration.

7 **Q:** Have you at any time ever employed any person other than yourself?

8 **A:** Well, yes I have.

9 **Q:** Do you believe that the fact that you have, at some point in your life,
10 employed one or more other persons entitle you to any special treatment or
11 consideration above and beyond any other Nebraskan that has also employed
12 one or more persons?

13 **A:** No, of course not.

14 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
15 have at one point employed another person within this state, entitles you to
16 preferential treatment or consideration of any kind?

17 **A:** No, of course not. If I choose to employ someone that decision is up to me. I
18 don't deserve any special treatment or consideration for that fact.

19 **Q:** At the beginning of your statement, you briefly described your property that
20 would be impacted by the potential Keystone XL Pipeline. I would like you to
21 give the Commissioners a sense of specifically how you believe the proposed
22 Keystone XL Pipeline and its preferred route, which proposes to go across
23 your land, how it would in your opinion based on your knowledge,
24 experience, and background of your land, affect it. So please share with the
25 Commissioners the characteristics of your land that you believe is important
26 for them to understand, while they evaluate TransCanada's application for a
27 route for its proposed pipeline to cross Nebraska and across your land,
28 specifically.

1 A: Our farms with electric irrigation systems have schedules of on and off time to
2 irrigate so what will happen when the pipeline uses a lot of our electricity? Also
3 our roads are not good enough for the large trucks and heavy equipment needed to
4 put the pipeline in. all the extra people will also tax our law enforcement people.
5 We don't need more temporary jobs, which it won't provide anyway; we just need
6 someone who will work – every paper is full of help wanted ads.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to our Interrogatory No. 211, TransCanada only
22 owns and operates one (1) major oil pipeline. They simply do not have the
23 experience with this type of pipeline and that scares me. There are others but that
24 is what I can recollect at this time and if I remember more or my recollection is
25 refreshed I will share those with the Commissioners at the Hearing in August.

26 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
27 **landowner is reasonable or just?**

28 A: No, I do not.

1 **Q: Do you have any concern about limitations that the construction of this**
2 **proposed pipeline across your affected land would prevent construction of**
3 **future structures upon the portion of your land affected by the proposed**
4 **easement and immediately surrounding areas?**

5 A: Well yes, of course I do. We would not be able to build many, if any, types of
6 structures directly across or touching the easement, and it would be unwise and I
7 would be uncomfortable to build anything near the easement for fear of being
8 blamed in the future should any damage or difficulty result on my property in
9 regards to the pipeline.

10 **Q: Do you think such a restriction would impact you economically?**

11 A: Well yes, of course.

12 **Q: How do you think such a restriction would impact you economically?**

13 A: The future of this land may not be exactly how it's being used as of this moment,
14 and having the restrictions and limiting my ability to develop my land in certain
15 ways presents a huge negative economic impact on myself, my family, and any
16 potential future owner of the property. You have no idea how I or the future owner
17 may want to use this land in the future or the other land across Nebraska
18 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
19 ago it would have been hard to imagine all the advances that we have now or how
20 things change. Because the Easement is forever and TransCanada gets the rights in
21 my land forever we have to think with a very long term view. By placing their
22 pipeline on under across and through my land that prevents future development
23 which greatly negatively impacts future taxes and tax revenue that could have
24 been generated by the County and State but now will not. When you look at the
25 short blip of economic activity that the two years of temporary construction efforts
26 may bring, that is far outweighed by the perpetual and forever loss of opportunity
27 and restrictions TransCanada is forcing upon us and Nebraska.

28 **Q: Do you have any concerns about the environmental impact of the proposed**
29 **pipeline?**

1 A: Yes, I do.

2 **Q: What are some of those concerns?**

3 A: As an affected land owner and Nebraskan, I am concerned that any construction,
4 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
5 a detrimental impact upon the environment of my land specifically, as well as the
6 lands near my land and surrounding the proposed pipeline route.

7 **Q: Do you have any other environmental concerns?**

8 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
9 construction and/or maintenance and operation. I am concerned about spills and
10 leaks that TransCanada has had in the past and will have in the future. This could
11 be catastrophic to my operations or others and to my county and the State.

12 **Q: Do you have any thoughts regarding if there would be an impact upon the**
13 **natural resources on or near your property due to the proposed pipeline?**

14 A: Yes, I believe that any construction, operation, and/or maintenance of the
15 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
16 resources of my land, and the lands near and surrounding the proposed pipeline
17 route.

18 **Q: Do you have any worries about potential impacts from the proposed pipeline**
19 **to the soil of your land, or land near you?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
22 land, as well as land along and surrounding the proposed pipeline route. This
23 includes, but is not limited to, the reasons that we discussed above of disturbing
24 the soil composition and makeup as it has naturally existed for thousands and
25 millions of years during the construction process, and any future maintenance or
26 removal process. I'm gravely concerned about the fertility and the loss of
27 economic ability of my property to grow the crops, or grow the grasses, or grow
28 whatever it is at that time they exist on my property or that I may want to grow in
29 the future, or that a future owner may want to grow. The land will never be the

1 same from as it exists now undisturbed to after it is trenched up for the proposed
2 pipeline.

3 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
4 **upon the groundwater over your land, or surrounding lands?**

5 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
6 the proposed Keystone XL Pipeline would have a detrimental impact upon the
7 groundwater of not only under my land, but also near and surrounding the pipeline
8 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
9 simple and it is simply too valuable to our State and the country to put at
10 unreasonable risk.

11 **Q: Do you have any concern about the potential impact of the proposed pipeline**
12 **upon the surface water on, or near or around your land?**

13 A: Yes, I have significant concerns that any construction, operation, and/or
14 maintenance of the proposed Keystone XL Pipeline would have detrimental
15 impact upon the surface water of not only within my property boundary, but along
16 and near and surrounding the pipeline route, and in fact, across the state of
17 Nebraska.

18 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
19 **upon the wildlife and plants, other than your growing crops on or near your**
20 **land?**

21 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
22 the proposed Keystone XL Pipeline would have a detrimental impact upon the
23 wildlife and the plants, not only that are located on or can be found upon my land,
24 but also near and along the proposed pipeline route.

25 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
26 **fair market value of your land?**

27 A: Yes, I do. I am significantly concerned about how the existence of the proposed
28 pipeline underneath and across and through my property will negatively affect the
29 fair market value at any point in the future, especially at that point in which I

1 would need to sell the property, or someone in my family would need to sell the
2 property. I do not believe, and certainly would not be willing to pay, the same
3 price for land that had the pipeline located on it, versus land that did not. I hope
4 there is never a point where I'm in a position where I have to sell and have to
5 realize as much value as I can out of my land. But because it is my single largest
6 asset, I'm gravely concerned that the existence of the proposed Keystone XL
7 Pipeline upon my land will affect a buyer's willingness to pay as much as they
8 would've paid and as much as I could've received, if the pipeline were not upon
9 my property. There are just too many risks, unknowns, impacts and uncertainties,
10 not to mention all of the rights you give up by the nature of having the pipeline
11 due to having the easement that we have previously discussed, for any reasonable
12 person to think that the existence of the pipeline would not negatively affect my
13 property's value.

14 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
15 **testimony?**

16 **A:** Yes, I have.

17 **Q: Where have you seen that before?**

18 **A:** That is a map I think I first saw a couple years ago that shows the Keystone XL
19 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
20 believe the portion of the alternative route in Nebraska essentially twins or
21 parallels Keystone I.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**
24 **the public interest of Nebraska?**

25 **A:** No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**
28 **route that is in the public interest of Nebraska?**

29 **A:** No, I do not.

Q: Do you believe the portion of the proposed pipeline within Nebraska as found in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe there is any potential route for the proposed Keystone XL Pipeline across, within, under, or through the State of Nebraska that is in the public interest of the citizens of Nebraska?

A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is

1 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
2 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
3 jobs are not created equal. Additionally, I understand from what I'm familiar with
4 from TransCanada's own statements that the jobs numbers they originally touted
5 were determined to be a minute fraction of the permanent jobs that had been
6 projected. According to their answer to our Interrogatory No. 191, TransCanada
7 has created only thirty-four (34) jobs within Nebraska working specifically on
8 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
9 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
10 Further, according to their answer to Interrogatory No. 199, TransCanada would
11 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
12 constructed on its Preferred Route or its Mainline Alternative Route.

13 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
14 **because it would cross your land?**

15 A: No, absolutely not. I am opposed to this project because it is not in the public
16 interest, neither within my community nor within our state.

17 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
18 **was to cross someone else's land?**

19 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
20 the fear and anxiety and potential foreseeable risks and negative impacts that this
21 type of a project carrying this type of product brings foisted upon anyone in this
22 state or any other state.

23 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
24 **Pipeline to cross the state of Nebraska?**

25 A: I don't believe there is an intelligent route because as I have stated I don't believe
26 this project anywhere within Nebraska is within the public interest. However, if
27 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
28 had to go somewhere in the state of Nebraska, the only intelligent route I believe
29 would be to twin or closely parallel the existing Keystone I Pipeline. Both the

1 preferred route and the mainline alternative routes are economic liabilities our
2 state cannot risk.

3 **Q: What do you rely upon to make that statement?**

4 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
5 already exists in that area is reason enough as it is not in our best interest or the
6 public interests to have more major oil pipelines crisscrossing our state. Second,
7 they have all the infrastructure already there in terms of relationships with the
8 counties and local officials and first responders along that route. Third, they have
9 already obtained easements from all the landowners along that route and have
10 relationships with them. Fourth, that route avoids our most sensitive soils, the
11 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
12 Aquifer. Sixth, they have already studied that route and previously offered it as an
13 alternative. Seventh, it just makes the most sense that as a state we would have
14 some intelligent policy of energy corridors and co-locating this type of
15 infrastructure near each other.

16 **Q: Do you have any other concerns you would like to reiterate or can think of at
17 this time you would like the Commissioners to understand?**

18 A: Yes. The pipeline still crosses the sand hills and the aquifer, which is Nebraska's
19 greatest resource. Millions of people rely on this good water and it would be a
20 great disaster if pollution occurred. The soil here is very sandy and once the top
21 soil and ground cover is disturbed you never get it back to natural. It will blow and
22 wash; we have fought blow-outs for years.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would
24 like the Public Service Commissioners to consider in their review of
25 TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this
27 document below but other things may come to me or my memory may be
28 refreshed and I will add and address those things at the time of the Hearing in
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of
2 TransCanada's answers to our discovery and the discovery of others so it was
3 impossible to competently and completely react to that in my testimony here and I
4 reserve the right to also address anything related to discovery that has not yet
5 concluded as of the date I signed this document below. Lastly, certain documents
6 requested have not yet been produced by TransCanada and therefore I may have
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: Does Attachment No. 8 here contain other documents you are competent to**
9 **speak about that you wish to be part of your testimony and to discuss in more**
10 **detail as needed at the August 2017 Hearing?**

11 A: Yes.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with myself and other landowners like

1 me when this applicant already has relationships with the landowners, the towns
2 and the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

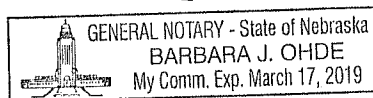
8 **A: Yes, they are.**

9 **Q: Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**

Sandra Breiner
Sandra Breiner

Subscribed and Sworn to me before this 30 day of May, 2017.

Barbara J. Ohde
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
James Carlson in
Support of Landowner Intervenors**

State of Nebraska)
) ss.
Polk County)

1 **Q: Please state your name.**

2 A: My name is James “Jim” Carlson. I am the president of C.R.C., Inc.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do, multiple fields and they are located in Polk County. My wife and I own
11 land through Trusts that would be affected and land owned by my corporation
12 C.R.C., Inc. would also be affected.

13 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
14 **photo(s) of your land in question here with the area of the proposed KXL**
15 **pipeline depicted?**

16 A: Yes.

EXHIBIT

11

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1 **Q: What do you do for a living?**

2 A: Farmer.

3 **Q: If you are you married tell us your spouse's name please?**

4 A: Christine.

5 **Q: Do you have children?**

6 A: Yes.

7 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
8 **and or your family?**

9 A: Yes.

10 **Q: For the land that would be affected and impacted by the proposed KXL tar**
11 **sands pipeline give the Commissioners a sense how long the land has been in**
12 **your family and a little history of the land.**

13 A: Land has been in the family for over 100 years, hundred and one years to be exact.
14 We are being awarded at the Polk County Fair this summer as Century Family
15 Farm members. The pipeline will be crossing 359 acre center-pivot erected in
16 2017.

17 **Q: Do you earn any income from this land?**

18 A: Yes.

19 **Q: Have you depended on the income from your land to support your livelihood**
20 **or the livelihood of your family?**

21 A: Yes.

22 **Q: Have you ever in the past or have you thought about in the future leasing all**
23 **or a portion of your land in question here?**

24 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
25 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
26 all the restrictions and risks and potential negative impacts to farming or ranching
27 operations as opposed to land that did not have those same risks. If I was looking
28 to lease or rent ground I would pay more for comparable non-pipeline land than I
29 would for comparable pipeline land and I think most folks would think the same

1 way. This is another negative economic impact that affects the landowner and the
2 county and the state and will forever and ever should TransCanada's preferred or
3 mainline alternative routes be approved. If they were to twin or closely parallel to
4 Keystone I the vast majority of landowners would be those that already have a
5 pipeline so there would be considerable less new incremental negative impacts.

6 **Q: Do you have similar concerns about selling the land?**

7 A: Well I hope not to have to sell the land in my lifetime but times change and you
8 never know what is around the corner and yes I am concerned that if another piece
9 of ground similar to mine were for sale and it did not have the pipeline and mine
10 did that I would have a lower selling price. I think this would be true for pipeline
11 ground on both the preferred and mainline alternative routes.

12 **Q: What is your intent with your land after you die?**

13 A: Like I said I hope not to have to sell and I hope that it stay in the family for years
14 to come but I have thought about getting out if this pipeline were to come through.

15 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
16 **Pipeline would cross the land described above and owned by you?**

17 A: Yes.

18 **Q: Were you or an entity for which you are a member, shareholder, or director**
19 **previously sued by TransCanada Keystone Pipeline, LP?**

20 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
21 petition for condemnation against our land so it could place its proposed pipeline
22 within an easement that it wanted to take from us on our land.

23 **Q: Did you defend yourself and your land in that condemnation action?**

24 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
25 and expenses in our resistance of TransCanada's lawsuit against us.

26 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
27 **incurred?**

28 A: No, they have not.

1 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
2 **property that it wanted to take for its proposed pipeline?**

3 **A:** The lawsuit against us stated they would take the amount of property that is
4 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
5 and equipment reasonably necessary to operate the pipeline.

6 **Q: Did TransCanada define what they meant by “property that is reasonably**
7 **necessary”?**

8 **A:** No, they did not.

9 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
10 **property portion of your land?**

11 **A:** Yes, they did.

12 **Q: Did TransCanada describe what rights it proposed to take related to the**
13 **eminent domain property on your land?**

14 **A:** Yes, they did.

15 **Q: What rights that they proposed to take did they describe?**

16 **A:** TransCanada stated that the eminent domain property will be used to “lay, relay,
17 operate, and maintain the pipeline and the plant and equipment reasonably
18 necessary to operate the pipeline, specifically including surveying, laying,
19 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
20 reconstructing, removing and abandoning one pipeline, together with all fittings,
21 cathodic protection equipment, pipeline markers, and all their equipment and
22 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
23 petroleum products, and all by-products thereof.”

24 **Q: Prior to filing an eminent domain lawsuit to take your land that**
25 **TransCanada identified, do you believe they attempted to negotiate in good**
26 **faith with you?**

27 **A:** No, I do not.

28 **Q: Did TransCanada at any time approach you with or deliver to you their**
29 **proposed easement and right-of-way agreement?**

1 A: Yes, they did.

2 Q: At the time you reviewed TransCanada's easement and right-of-way
3 agreement, did you understand that they would be purchasing a fee title
4 interest in your property or that they were taking something else?

5 A: I understood that they proposed to have the power to take both a temporary
6 construction easement that could last for a certain period of time and then also a
7 permanent easement which they described to be 50 feet across or in width, and
8 that would run the entire portion of my property from where a proposed pipeline
9 would enter my property until where it would exit the property.

10 Q: Is the document included with your testimony here as Attachment No. 3, a
11 true and accurate copy of each of TransCanada's proposed Easement and
12 Right-of-Way agreement that they included with their condemnation lawsuit
13 against you?

14 A: Yes, they are. TransCanada condemned multiple properties.

15 Q: Have you had an opportunity to review TransCanada's proposed Easement
16 and Right-of-Way agreement?

17 A: Yes, I have.

18 Q: What is your understanding of the significance of the Easement and Right-of-
19 Way agreement as proposed by TransCanada?

20 A: My understanding is that this is the document that will govern all of the rights and
21 obligations and duties as well as the limitations of what I can and cannot do and
22 how I and any future landowner and any person I invite to come onto my property
23 must behave as well as what TransCanada is and is not responsible for and how
24 they can use my land.

25 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
26 agreement do you have any concerns about any portions of it or any of the
27 language either included in the document or missing from the proposed
28 document?

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts my land and thereby potentially negatively impacts my community and
4 my state.

5 Q: I would like you to walk the Commissioners through each and every one of
6 your concerns about TransCanada's proposed Easement and Right-of-Way
7 agreement so they can develop an understanding of how that language and
8 the terms of that contract, in your opinion, potentially negatively impacts you
9 and your land. So, if you can start at the beginning of that document and
10 let's work our way through it, okay?

11 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
12 Easement and Right-of-Way agreement and how it negatively could affect my
13 property rights and my economic interests.

14 Q. Okay, let's start with your first concern please.

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate me for all of the known and unknown affects and all of the
17 rights I am giving up and for all the things they get to do to my land and for what
18 they will prevent me from doing on my land and they only will pay me one time at
19 the signing of the easement agreement. That is a huge problem.

20 Q: Explain to the Commissioners why that is a problem.

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have my land forever for use as they see fit so
23 they can make a daily profit from their customers. If I was to lease ground from
24 my neighbor I would typically pay twice a year every year as long as they granted
25 me the rights to use their land. That only makes sense – that is fair. If I was going
26 to rent a house in town I would typically pay monthly, every month until I gave up
27 my right to use that house. By TransCanada getting out on the cheap and paying
28 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
29 revenue collection on the money I would be paid and then pay taxes on and

1 contribute to this state and this country. It is money I would be putting back into
2 my local community both spending and stimulating the local economy and
3 generating more economic activity right here. Instead TransCanada's shareholders
4 keep all that money and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 **A:** The first paragraph goes on to say Grantor, which is me the landowner, "does
7 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
8 limited partnership..." and I have no idea who that really is. I have no idea who is
9 forcing this pipeline on us or who the owners of the entities are, or what are the
10 assets backing this limited partnership, or who the general partner is, or who all
11 the limited partners are, and who makes up the ownership of the these partners or
12 the structure or any of the basic things you would want to know and understand if
13 you would want to do business with such an outfit. According to TransCanada's
14 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who could become the owner of about 275 miles of**
21 **Nebraska land?**

22 **A:** No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
24 **percent clear on exactly who will be operating and responsible for**
25 **approximately 275 miles of tar sands pipeline underneath and through**
26 **Nebraska land?**

27 **A:** No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
29 **and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
2 called "Grantee")..." and this concerns me because it would allow the easement to
3 be transferred or sold to someone or some company or country or who knows what
4 that I don't know and who we may not want to do business with. This pipeline
5 would be a huge asset for TransCanada and if they can sell to the highest bidder
6 that could have terrible impacts upon all of Nebraska depending upon who may
7 buy it and I don't know of any safeguards in place for us or the State to veto or
8 have any say so in who may own, operate, or be responsible for this pipeline in the
9 future.

10 **Q: Do you think that type of uncertainty and lack of control over a major piece**
11 **of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 **Q: What's next?**

14 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is like forever and that doesn't make sense.

18 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada's application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. My land however
25 will, and I want my family or future Nebraska families to have that land as
26 undisturbed as possible and it is not in my interest or the public interest of
27 Nebraska to be forced to give up perpetual and permanent rights in the land for
28 this specific kind of pipeline project.

29 **Q: Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 "...abandoning in place..." so they can just leave this pipeline under my ground
3 until the end of time just sitting there while they are not using it, but I am still
4 prevented from doing on my land and using my land what I would like. If I owned
5 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
6 there. It doesn't make sense and it scares me and it is not in my interest or the
7 public interest of Nebraska to allow this.

8 Q: Now it looks like we are ready to go to the second page of the Easement is that
9 right?

10 A: Yes.

11 Q: So now on the second page of the Easement what are your concerns?

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment "actual pipeline installation activities" begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 "installation activity" For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of "force majeure." My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada's easement this is
25 expanded to include "without limitation...availability of labor and materials."
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether

during growing season or not, to travel “within and along Easement Area on foot or in vehicle or machinery...” Further at TransCanada’s sole discretion it will retain the rights to prevent any landowner activity that it thinks may “unreasonably impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner’s land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase “where rock is encountered” mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada’s preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil

condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative the their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiation any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in

place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"

1 xx. “pre-construction grade”

2 xxi. “various engineering factors”

3 Each one of these above terms and phrases as read in the context of the Easement
4 could be problematic in many ways. Notably, undefined terms tend to only get
5 definition in further legal proceedings after a dispute arises and the way the
6 Easement is drafted, TransCanada has sole power to determine when and if a
7 particular situation conforms with or triggers rights affected by these terms. For
8 instance, “yield loss damages” should be specifically defined and spelled out
9 exactly how the landowner is to be compensated and in what events on the front
10 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
11 the Landowner is without contractual rights to define these terms or determine
12 when rights related to them trigger and what the affects may be.

13 **Q: Do you have any other concerns about the Easement language that you can**
14 **think of at this time?**

15 A: I reserve the right to discuss any additional concerns that I think of at the time of
16 my live testimony in August.

17 **Q: Based upon what you have shared with the Commission above regarding**
18 **TransCanada’s proposed Easement terms and agreement, do you believe**
19 **those to be reasonable or just, under the circumstances of the pipeline’s**
20 **impact upon you and your land?**

21 A: No, I do not believe those terms to be reasonable or just for the reasons that we
22 discussed previously.

23 **Q: Did TransCanada ever offer you financial compensation for the rights that**
24 **they sought to obtain in your land, and for what they sought to prevent you**
25 **and any future land owner of your property from doing in the future?**

26 A: Yes, we received an offer from them.

27 **Q: As the owner of the land in question and as the person who knows it better**
28 **than anyone else, do you believe that TransCanada offered you just, or fair,**

1 compensation for all of what they proposed to take from you so that their tar
2 sands pipeline could be located across your property?

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that I'm giving up, and
5 what we will be prevented from doing in the future and how their pipeline would
6 impact my property for ever and ever.

7 Q: Has TransCanada at any time offered to compensate you annually, such as
8 wind farm projects do, for the existence of their potential tar sands pipeline
9 across your property.

10 A: No, never.

11 Q: At any time did TransCanada present you with or request that you, as the
12 owner of the land in question, sign and execute a document called, "Advanced
13 Release of Damage Claims and Indemnity Agreement?"

14 A: Yes, they did and it was included in the County Court lawsuits against us.

15 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
16 "Advanced Release of Damage Claims and Indemnity Agreement?"

17 A: Yes, it is.

18 Q: What was your understanding of that document?

19 A: When I read that document in the plain language of that document, it was my
20 understanding that TransCanada was attempting to pay me a very small amount at
21 that time in order for me to agree to give up my rights to be compensated from
22 them in the future related to any damage or impact they may have upon my
23 property "arising out of, in connection with, or alleged to resulted from
24 construction or surveying over, under or on" my land.

25 Q: Did you ever sign that document?

26 A: No, I did not.

27 Q: Why not?

28 A: Because I do not believe that it is fair or just to try to get me to agree to a small
29 sum of money when I have no idea how bad the impacts or damages that they, or

1 their contractors, or subcontractors, or other agents or employees, may cause on
2 my land at any time in the future that resulted from the construction or surveying
3 or their activities upon my land.

4 **Q: When you reviewed this document, what did it make you feel?**

5 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
6 shield themselves against known and foreseeable impacts that their pipeline, and
7 the construction of it, would have upon my land. It made me feel that they knew it
8 was in their financial interest to pay me as little as possible to prevent me from
9 ever having the opportunity to seek fair compensation again, and that this must be
10 based upon their experience of unhappy landowners and situations in other places
11 where they have built pipelines.

12 **Q: Has TransCanada ever contacted you and specifically asked you if you**
13 **thought their proposed location of their proposed pipeline across your land**
14 **was in your best interest?**

15 A: No, they have not.

16 **Q: Has TransCanada ever contacted you and specifically asked you if you**
17 **thought their proposed location of their proposed pipeline across your land**
18 **was in the public interest of the State of Nebraska?**

19 A: No, they have not.

20 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
21 **Takings Clause?**

22 A: Yes, I am.

23 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
24 **an American citizens property?**

25 A: My understanding is that, according to the United States Constitution, that if the
26 government is going to take land for public use, then in that case, or by taking for
27 public use, it can only occur if the private land owner is compensated justly, or
28 fairly.

1 **Q:** Has TransCanada ever contacted you specially to explain the way in which
2 the public could use its proposed Keystone XL Pipeline?

3 **A:** No, they have not.

4 **Q:** Can you think of any way in which the public, that is the citizens of the State
5 of Nebraska, can directly use the proposed TransCanada Keystone XL
6 Pipeline, as it dissects the State of Nebraska?

7 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
8 public benefits from this pipeline in any way, how they can use it any way, or how
9 it's in the public interest in any way. By looking at the map, it is quite clear to me
10 that the only reason it's proposed to come through Nebraska, is that because we
11 are geographically in the way from between where the privately-owned Tar Sands
12 are located to where TransCanada wants to ship the Tar Sands to refineries in
13 Houston, Texas.

14 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
15 crude petroleum, or oil and petroleum by-products that you would like to
16 ship in its pipeline?

17 **A:** No, it has not.

18 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
19 products that you, at this time or any time in the future, would desire to place
20 for transport within the proposed TransCanada Keystone XL Pipeline?

21 **A:** No, I do not.

22 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
23 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
24 products within the proposed TransCanada Keystone XL Pipeline?

25 **A:** No, I do not. I've never heard of such a person or company like that.

26 **Q:** Do you pay property taxes for the land that would be affected and impacted
27 at the proposed TransCanada Keystone XL Pipeline?

28 **A:** Yes, I do.

29 **Q:** Why do you pay property taxes on that land?

1 A: Because that is the law. The law requires us to pay the property taxes as the owner
2 of that property.

3 Q: **Because you follow the law and pay property taxes, do you believe you**
4 **deserve any special consideration or treatment apart from any other person**
5 **or company that pays property taxes?**

6 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
7 just what you do.

8 Q: **Do you believe the fact that you pay property taxes entitles you to special**
9 **treatment of any kind, or special rights of any kind?**

10 A: No, of course not.

11 Q: **Do you believe the fact that you pay property taxes on your land would be**
12 **enough to qualify you to have the power of eminent domain to take land of**
13 **your neighbors or other people in your county, or other people across the**
14 **state of Nebraska?**

15 A: **Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
16 **I expect an award for or any type of special consideration.**

17 Q: **Have you at any time ever employed any person other than yourself?**

18 A: Well, yes I have.

19 Q: **Do you believe that the fact that you have, at some point in your life,**
20 **employed one or more other persons entitle you to any special treatment or**
21 **consideration above and beyond any other Nebraskan that has also employed**
22 **one or more persons?**

23 A: No, of course not.

24 Q: **Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
25 **have at one point employed another person within this state, entitles you to**
26 **preferential treatment or consideration of any kind?**

27 A: No, of course not. If I choose to employ someone that decision is up to me. I
28 don't deserve any special treatment or consideration for that fact.

Q: Do you have any concerns TransCanada's fitness as an applicant for a major crude oil pipeline in its preferred location, or ultimate location across the state of Nebraska?

A: Yes, I have significant concerns. I am aware of landowners being treated unfairly or even bullied around and being made to feel scared that they did not have any options but to sign whatever papers TransCanada told them they had to. I am aware of folks being threatened that their land would be taken if they didn't follow what TransCanada was saying. I am aware of tactics to get people to sign easements that I don't believe have any place in Nebraska or anywhere such as TransCanada or some outfit associated with it hiring a pastor or priest to pray with landowners and convince them they should sign TransCanada's easement agreements. I am aware of older folks and widows or widowers feeling they had no choice but to sign TransCanada's Easement and they didn't know they could fight or stand up for themselves. From a more practical standpoint, I am worried that according to their answer to our Interrogatory No. 211, TransCanada only owns and operates one (1) major oil pipeline. They simply do not have the experience with this type of pipeline and that scares me. There are others but that is what I can recollect at this time and if I remember more or my recollection is refreshed I will share those with the Commissioners at the Hearing in August.

Q: Do you believe TransCanada's proposed method of compensation to you as a landowner is reasonable or just?

A: No, I do not.

Q: Do you have any concern about limitations that the construction of this proposed pipeline across your affected land would prevent construction of future structures upon the portion of your land affected by the proposed easement and immediately surrounding areas?

A: Well yes, of course I do. We would not be able to build many, if any, types of structures directly across or touching the easement, and it would be unwise and I would be uncomfortable to build anything near the easement for fear of being

1 blamed in the future should any damage or difficulty result on my property in
2 regards to the pipeline.

3 **Q: Do you think such a restriction would impact you economically?**

4 A: Well yes, of course.

5 **Q: How do you think such a restriction would impact you economically?**

6 A: The future of this land may not be exactly how it's being use as of this moment,
7 and having the restrictions and limiting my ability to develop my land in certain
8 ways presents a huge negative economic impact on myself, my family, and any
9 potential future owner of the property. You have no idea how I or the future own
10 may want to use this land in the future or the other land across Nebraska
11 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
12 ago it would have been hard to imagine all the advances that we have now or how
13 things change. Because the Easement is forever and TransCanada gets the rights in
14 my land forever we have to think with a very long term view. By placing their
15 pipeline on under across and through my land that prevents future development
16 which greatly negatively impacts future taxes and tax revenue that could have
17 been generated by the County and State but now will not. When you look at the
18 short blip of economic activity that the two years of temporary construction efforts
19 may bring, that is far outweighed by the perpetual and forever loss of opportunity
20 and restrictions TransCanada is forcing upon us and Nebraska.

21 **Q: Do you have any concerns about the environmental impact of the proposed**
22 **pipeline?**

23 A: Yes, I do.

24 **Q: What are some of those concerns?**

25 A: As an affected land owner and Nebraskan, I am concerned that any construction,
26 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
27 a detrimental impact upon the environment of my land specifically, as well as the
28 lands near my land and surrounding the proposed pipeline route.

29 **Q: Do you have any other environmental concerns?**

1 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
2 construction and/or maintenance and operation. I am concerned about spills and
3 leaks that TransCanada has had in the past and will have in the future. This could
4 be catastrophic to my operations or others and to my county and the State.

5 Q: Do you have any thoughts regarding if there would be an impact upon the
6 natural resources on or near your property due to the proposed pipeline?

7 A: Yes, I believe that any construction, operation, and/or maintenance of the
8 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
9 resources of my land, and the lands near and surrounding the proposed pipeline
10 route.

11 Q: Do you have any worries about potential impacts from the proposed pipeline
12 to the soil of your land, or land near you?

13 A: Yes, I believe that any construction, operation, and/or maintenance of the
14 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
15 land, as well as land along and surrounding the proposed pipeline route. This
16 includes, but is not limited to, the reasons that we discussed above of disturbing
17 the soil composition and makeup as it has naturally existed for thousands and
18 millions of years during the construction process, and any future maintenance or
19 removal process. I'm gravely concerned about the fertility and the loss of
20 economic ability of my property to grow the crops, or grow the grasses, or grow
21 whatever it is at that time they exist on my property or that I may want to grow in
22 the future, or that a future owner may want to grow. The land will never be the
23 same from as it exists now undisturbed to after it is trenched up for the proposed
24 pipeline.

25 Q: Do you have any concerns about the potential impact of the proposed pipeline
26 upon the groundwater over your land, or surrounding lands?

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the
29 groundwater of not only under my land, but also near and surrounding the pipeline

1 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
2 simple and it is simply too valuable to our State and the country to put at
3 unreasonable risk.

4 **Q: Do you have any concern about the potential impact of the proposed pipeline**
5 **upon the surface water on, or near or around your land?**

6 A: Yes, I have significant concerns that any construction, operation, and/or
7 maintenance of the proposed Keystone XL Pipeline would have detrimental
8 impact upon the surface water of not only within my property boundary, but along
9 and near and surrounding the pipeline route, and in fact, across the state of
10 Nebraska.

11 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
12 **upon the wildlife and plants, other than your growing crops on or near your**
13 **land?**

14 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
15 the proposed Keystone XL Pipeline would have a detrimental impact upon the
16 wildlife and the plants, not only that are located on or can be found upon my land,
17 but also near and along the proposed pipeline route.

18 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
19 **fair market value of your land?**

20 A: Yes, I do. I am significantly concerned about how the existence of the proposed
21 pipeline underneath and across and through my property will negatively affect the
22 fair market value at any point in the future, especially at that point in which I
23 would need to sell the property, or someone in my family would need to sell the
24 property. I do not believe, and certainly would not be willing to pay, the same
25 price for land that had the pipeline located on it, versus land that did not. I hope
26 there is never a point where I'm in a position where I have to sell and have to
27 realize as much value as I can out of my land. But because it is my single largest
28 asset, I'm gravely concerned that the existence of the proposed Keystone XL
29 Pipeline upon my land will affect a buyer's willingness to pay as much as they

1 would've paid and as much as I could've received, if the pipeline were not upon
2 my property. There are just too many risks, unknowns, impacts and uncertainties,
3 not to mention all of the rights you give up by the nature of having the pipeline
4 due to having the easement that we have previously discussed, for any reasonable
5 person to think that the existence of the pipeline would not negatively affect my
6 property's value.

7 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
8 **testimony?**

9 A: Yes, I have.

10 **Q: Where have you seen that before?**

11 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
12 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
13 believe the portion of the alternative route in Nebraska essentially twins or
14 parallels Keystone I.

15 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
16 **Application, and as found on Attachment No. 7, here to your testimony, is in**
17 **the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe that the Keystone mainline alternative route as shown on**
20 **Attachment No. 7 included with your testimony here is a major oil pipeline**
21 **route that is in the public interest of Nebraska?**

22 A: No, I do not.

23 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
24 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
25 **your testimony, is in the public interest of Nebraska?**

26 A: No, I do not.

27 **Q: Do you believe there is any potential route for the proposed Keystone XL**
28 **Pipeline across, within, under, or through the State of Nebraska that is in the**
29 **public interest of the citizens of Nebraska?**

1 **A:** No, I do not.

2 **Q:** **Why do you hold that belief?**

3 **A:** Because there simply is no public interest based on all of the factors that I am
4 aware and that I have read and that I have studied that this Commission is to
5 consider that would establish that a for-profit foreign-owned pipeline that simply
6 crosses Nebraska because we are geographically in the way between where tar
7 sands are in Canada to where it wants to ship it to in Texas could ever be in the
8 public interest of Nebraskans. We derive no benefit from this project. It is not for
9 public use. Nebraska is simply in the way and when all considerations are taken in
10 there is no net benefit of any kind for Nebraska should this project be placed in our
11 state. Even if there was some arguable “benefit” it is not enough to outweigh all
12 the negative impacts and concerns.

13 **Q:** **What do you think about the applicant, TransCanada’s argument that it’s**
14 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
15 **of Nebraska because it may bring temporary jobs during the construction**
16 **phase to Nebraska?**

17 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
18 temporary or on a permanent basis, don’t come with a project that has all the
19 potential and foreseeable negative impacts, many of which we have discussed here
20 and other witnesses throughout the course of this hearing have and will discuss. If
21 I decide to hire and employ someone to help me out in my farming or ranching
22 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
23 to my land or my town or my county or my state. And I’ve hired someone who is
24 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
25 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
26 jobs are not created equal. Additionally, I understand from what I’m familiar with
27 from TransCanada’s own statements that the jobs numbers they originally touted
28 were determined to be a minute fraction of the permanent jobs that had been
29 projected. According to their answer to our Interrogatory No. 191, TransCanada

1 has created only thirty-four (34) jobs within Nebraska working specifically on
2 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
3 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
4 Further, according to their answer to Interrogatory No. 199, TransCanada would
5 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
6 constructed on its Preferred Route or its Mainline Alternative Route.

7 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
8 **because it would cross your land?**

9 A: No, absolutely not. I am opposed to this project because it is not in the public
10 interest, neither within my community nor within our state.

11 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
12 **was to cross someone else's land?**

13 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
14 the fear and anxiety and potential foreseeable risks and negative impacts that this
15 type of a project carrying this type of product brings foisted upon anyone in this
16 state or any other state.

17 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
18 **Pipeline to cross the state of Nebraska?**

19 A: I don't believe there is an intelligent route because as I have stated I don't believe
20 this project anywhere within Nebraska is within the public interest. However, if
21 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
22 had to go somewhere in the state of Nebraska, the only intelligent route I believe
23 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
24 preferred route and the mainline alternative routes are economic liabilities our
25 state cannot risk.

26 **Q: What do you rely upon to make that statement?**

27 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
28 already exists in that area is reason enough as it is not in our best interest or the
29 public interests to have more major oil pipelines crisscrossing our state. Second,

1 they have all the infrastructure already there in terms of relationships with the
2 counties and local officials and first responders along that route. Third, they have
3 already obtained easements from all the landowners along that route and have
4 relationships with them. Fourth, that route avoids our most sensitive soils, the
5 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
6 Aquifer. Sixth, they have already studied that route and previously offered it as an
7 alternative. Seventh, it just makes the most sense that as a state we would have
8 some intelligent policy of energy corridors and co-locating this type of
9 infrastructure near each other.

10 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
11 **like the Public Service Commissioners to consider in their review of**
12 **TransCanada's Application?**

13 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
14 document below but other things may come to me or my memory may be
15 refreshed and I will add and address those things at the time of the Hearing in
16 August and address any additional items at that time as is necessary. Additionally,
17 I have not had an adequate amount of time to receive and review all of
18 TransCanada's answers to our discovery and the discovery of others so it was
19 impossible to competently and completely react to that in my testimony here and I
20 reserve the right to also address anything related to discovery that has not yet
21 concluded as of the date I signed this document below. Lastly, certain documents
22 requested have not yet been produced by TransCanada and therefore I may have
23 additional thoughts on those I will also share at the hearing as needed.

24 **Q: What is it that you are requesting the Public Service Commissioners do in**
25 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
26 **across Nebraska?**

27 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
28 a temporary job spike that this project may bring to a few counties and beyond the
29 relatively small amount of taxes this proposed foreign pipeline would possibly

1 generate. And, instead think about the perpetual and forever impacts of this
2 pipeline as it would have on the landowners specifically, first and foremost, but
3 also thereby upon the entire state of Nebraska, and to determine that neither the
4 preferred route nor the Keystone mainline alternative route are in the public
5 interest of the citizens of the state of Nebraska. And if the Commissioners were
6 inclined to modify TransCanada's proposed routes and were to be inclined to grant
7 an application for a route in Nebraska, that the only potential route that would
8 make any intelligent sense whatsoever would be twinning or near paralleling of
9 the proposed KXL with the existing Keystone I pipeline. It simply does not make
10 sense to add yet another major oil pipeline crisscrossing our state creating new
11 pumping stations, creating new impacts on additional counties and communities
12 and going through all of the court processes with myself and other landowners like
13 me when this applicant already has relationships with the landowners, the towns
14 and the communities along Keystone I, and that Keystone I is firmly outside of the
15 sand hills and a significantly further portion away from the heart of the Ogallala
16 Aquifer than the preferred route or the Keystone mainline alternative route.

17 **Q: Are all of your statements in your testimony provided above true and**
18 **accurate as of the date you signed this document to the best of your**
19 **knowledge?**

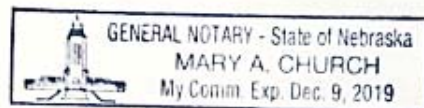
20 **A:** Yes, they are.

21 **Q: Thank you, I have no further questions at this time and reserve the right to**
22 **ask you additional questions at the August 2017 Hearing.**

James Carlson
James Carlson

Subscribed and Sworn to me before this 1 day of ^{June}~~May~~, 2017.

Mary A Church
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Jerry Carpenter in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Jerry Carpenter

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: Charlayne Carpenter

EXHIBIT

12

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1 **Q: If you have children how many do you have?**

2 A: 2

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: Our land that would be affected by the KXL pipeline has not been in "the family"
10 very long. Less than 10 years. It has a pivot on it and is very sandy soil. If the
11 route stays the same it will affect the NE corner of the quarter and take out shrubs
12 and trees for the most part but from what we understand the construction width
13 will be much wider than the pipe itself so will probably affect some portion of the
14 field. This corner sits at the intersection of two "sand trails" or minimum
15 maintenance roads. Will KXL replace trees and shrubs that are removed? While
16 we understand that they would not be replaced over top of the pipeline, they could
17 be replaced in other areas of the county. We have already lost many trees in our
18 area of the county because of the NPPD Neligh to Hoskins transmission line
19 project. We don't need to lose more because of a pipeline.

20 **Q: Do you earn any income from this land?**

21 A: Yes.

22 **Q: Have you depended on the income from your land to support your livelihood**
23 **or the livelihood of your family?**

24 A: Yes.

25 **Q: Have you ever in the past or have you thought about in the future leasing all**
26 **or a portion of your land in question here?**

27 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
28 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
29 all the restrictions and risks and potential negative impacts to farming or ranching

1 operations as opposed to land that did not have those same risks. If I was looking
2 to lease or rent ground I would pay more for comparable non-pipeline land than I
3 would for comparable pipeline land and I think most folks would think the same
4 way. This is another negative economic impact that affects the landowner and the
5 county and the state and will forever and ever should TransCanada's preferred or
6 mainline alternative routes be approved. If they were to twin or closely parallel to
7 Keystone I the vast majority of landowners would be those that already have a
8 pipeline so there would be considerable less new incremental negative impacts.

9 **Q: Do you have similar concerns about selling the land?**

10 A: Well I hope not to have to sell the land in my lifetime but times change and you
11 never know what is around the corner and yes I am concerned that if another piece
12 of ground similar to mine were for sale and it did not have the pipeline and mine
13 did that I would have a lower selling price. I think this would be true for pipeline
14 ground on both the preferred and mainline alternative routes.

15 **Q: What is your intent with your land after you die?**

16 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
17 to come but I have thought about getting out if this pipeline were to come through.

18 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
19 Pipeline would cross the land described above and owned by you?**

20 A: Yes.

21 **Q: Were you or an entity for which you are a member, shareholder, or director
22 previously sued by TransCanada Keystone Pipeline, LP?**

23 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
24 petition for condemnation against our land so it could place its proposed pipeline
25 within an easement that it wanted to take from us on our land.

26 **Q: Did you defend yourself and your land in that condemnation action?**

27 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
28 and expenses in our resistance of TransCanada's lawsuit against us.

1 **Q:** **Has TransCanada reimbursed you for any of your expenses or costs for fees**
2 **incurred?**

3 **A:** **No, they have not.**

4 **Q:** **In its lawsuit against you, did TransCanada identify the amount of your**
5 **property that it wanted to take for its proposed pipeline?**

6 **A:** **The lawsuit against us stated they would take the amount of property that is**
7 **reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant**
8 **and equipment reasonably necessary to operate the pipeline.**

9 **Q:** **Did TransCanada define what they meant by “property that is reasonably**
10 **necessary”?**

11 **A:** **No, they did not.**

12 **Q:** **Did TransCanada in its lawsuit against you, identify the eminent domain**
13 **property portion of your land?**

14 **A:** **Yes, they did.**

15 **Q:** **Did TransCanada describe what rights it proposed to take related to the**
16 **eminent domain property on your land?**

17 **A:** **Yes, they did.**

18 **Q:** **What rights that they proposed to take did they describe?**

19 **A:** **TransCanada stated that the eminent domain property will be used to “lay, relay,**
20 **operate, and maintain the pipeline and the plant and equipment reasonably**
21 **necessary to operate the pipeline, specifically including surveying, laying,**
22 **constructing, inspecting, maintaining, operating, repairing, replacing, altering,**
23 **reconstructing, removing and abandoning one pipeline, together with all fittings,**
24 **cathodic protection equipment, pipeline markers, and all their equipment and**
25 **appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,**
26 **petroleum products, and all by-products thereof.”**

27 **Q:** **Prior to filing an eminent domain lawsuit to take your land that**
28 **TransCanada identified, do you believe they attempted to negotiate in good**
29 **faith with you?**

1 A: No, I do not.

2 Q: Did TransCanada at any time approach you with or deliver to you their
3 proposed easement and right-of-way agreement?

4 A: Yes, they did.

5 Q: At the time you reviewed TransCanada's easement and right-of-way
6 agreement, did you understand that they would be purchasing a fee title
7 interest in your property or that they were taking something else?

8 A: I understood that they proposed to have the power to take both a temporary
9 construction easement that could last for a certain period of time and then also a
10 permanent easement which they described to be 50 feet across or in width, and
11 that would run the entire portion of my property from where a proposed pipeline
12 would enter my property until where it would exit the property.

13 Q: Is the document included with your testimony here as Attachment No. 3, a
14 true and accurate copy of TransCanada's proposed Easement and Right-of-
15 Way agreement that they included with their condemnation lawsuit against
16 you?

17 A: Yes, it is.

18 Q: Have you had an opportunity to review TransCanada's proposed Easement
19 and Right-of-Way agreement?

20 A: Yes, I have.

21 Q: What is your understanding of the significance of the Easement and Right-of-
22 Way agreement as proposed by TransCanada?

23 A: My understanding is that this is the document that will govern all of the rights and
24 obligations and duties as well as the limitations of what I can and cannot do and
25 how I and any future landowner and any person I invite to come onto my property
26 must behave as well as what TransCanada is and is not responsible for and how
27 they can use my land.

28 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
29 agreement do you have any concerns about any portions of it or any of the

1 language either included in the document or missing from the proposed
2 document?

3 A: Yes, I have a number of significant concerns and worries about the document and
4 how the language included and the language not included potentially negatively
5 impacts my land and thereby potentially negatively impacts my community and
6 my state.

7 Q: I would like you to walk the Commissioners through each and every one of
8 your concerns about TransCanada's proposed Easement and Right-of-Way
9 agreement so they can develop an understanding of how that language and
10 the terms of that contract, in your opinion, potentially negatively impacts you
11 and your land. So, if you can start at the beginning of that document and
12 let's work our way through it, okay?

13 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
14 Easement and Right-of-Way agreement and how it negatively could affect my
15 property rights and my economic interests.

16 Q: Okay, let's start with your first concern please.

17 A: The very first sentence talks about consideration or how much money they will
18 pay to compensate me for all of the known and unknown affects and all of the
19 rights I am giving up and for all the things they get to do to my land and for what
20 they will prevent me from doing on my land and they only will pay me one time at
21 the signing of the easement agreement. That is a huge problem.

22 Q: Explain to the Commissioners why that is a problem.

23 A: It is not fair to the landowner, the county, or the State. It is not fair to the
24 landowner because they want to have my land forever for use as they see fit so
25 they can make a daily profit from their customers. If I was to lease ground from
26 my neighbor I would typically pay twice a year every year as long as they granted
27 me the rights to use their land. That only makes sense – that is fair. If I was going
28 to rent a house in town I would typically pay monthly, every month until I gave up
29 my right to use that house. By TransCanada getting out on the cheap and paying

1 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
2 revenue collection on the money I would be paid and then pay taxes on and
3 contribute to this state and this country. It is money I would be putting back into
4 my local community both spending and stimulating the local economy and
5 generating more economic activity right here. Instead TransCanada's shareholders
6 keep all that money and it never finds its way to Nebraska.

7 **Q: What is your next concern?**

8 **A:** The first paragraph goes on to say Grantor, which is me the landowner, "does
9 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
10 limited partnership..." and I have no idea who that really is. I have no idea who is
11 forcing this pipeline on us or who the owners of the entities are, or what are the
12 assets backing this limited partnership, or who the general partner is, or who all
13 the limited partners are, and who makes up the ownership of the these partners or
14 the structure or any of the basic things you would want to know and understand if
15 you would want to do business with such an outfit. According to TransCanada's
16 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
17 liability company called TransCanada Keystone Pipeline GP, LLC is the general
18 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
19 basically nothing. That is really scary since the general partner has the liability but
20 virtually none of the ownership and who knows if it has any other assets.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who could become the owner of over 275 miles of**
23 **Nebraska land?**

24 **A:** No.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who will be operating and responsible for**
27 **approximately 275 miles of tar sands pipeline underneath and through**
28 **Nebraska land?**

29 **A:** No.

1 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
2 and the State of Nebraska of TransCanada's easement terms.

3 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
4 called "Grantee")..." and this concerns me because it would allow the easement to
5 be transferred or sold to someone or some company or country or who knows what
6 that I don't know and who we may not want to do business with. This pipeline
7 would be a huge asset for TransCanada and if they can sell to the highest bidder
8 that could have terrible impacts upon all of Nebraska depending upon who may
9 buy it and I don't know of any safeguards in place for us or the State to veto or
10 have any say so in who may own, operate, or be responsible for this pipeline in the
11 future.

12 **Q:** Do you think that type of uncertainty and lack of control over a major piece
13 of infrastructure crossing our State is in the public interest?

14 **A:** No, certainly not, in fact, just the opposite.

15 **Q:** What's next?

16 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
17 really concerns me. Why does the easement and right-of-way have to be perpetual
18 and permanent? That is the question myself and my family want an answer to.
19 Perpetual to me is like forever and that doesn't make sense.

20 **Q:** Why doesn't a perpetual Easement and Right-of-Way make sense to you?

21 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
22 data proving there is a perpetual supply of tar sands. I am not aware in
23 TransCanada's application where it proves there is a perpetual necessity for this
24 pipeline. My understanding of energy infrastructure like wind towers is they have
25 a decommission plan and actually take the towers down when they become
26 obsolete or no longer needed. Nothing manmade lasts forever. My land however
27 will, and I want my family or future Nebraska families to have that land as
28 undisturbed as possible and it is not in my interest or the public interest of

1 Nebraska to be forced to give up perpetual and permanent rights in the land for
2 this specific kind of pipeline project.

3 **Q: Okay, what is your next concern?**

4 A: The easement language includes all these things TransCanada can do and it says
5 "...abandoning in place..." so they can just leave this pipeline under my ground
6 until the end of time just sitting there while they are not using it, but I am still
7 prevented from doing on my land and using my land what I would like. If I owned
8 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
9 there. It doesn't make sense and it scares me and it is not in my interest or the
10 public interest of Nebraska to allow this.

11 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
12 **right?**

13 A: Yes.

14 **Q: So now on the second page of the Easement what are your concerns?**

15 A: Here the Easement identifies a 24-month deadline to complete construction of the
16 pipeline but has caveats that are undefined and ambiguous. The 24-month period
17 starts to run from the moment "actual pipeline installation activities" begin on
18 Landowners property. It appears that TransCanada would define this phrase as
19 needed. It would be wise to explain what types of TransCanada action constitutes
20 "installation activity" For instance, would the placement and storage of an
21 excavator or other equipment on or near the Easement property be an activity or
22 would earth have to be moved before the activity requirement is triggered. This
23 vague phrase is likely to lead to future disputes and litigation that is not in the best
24 interest of the welfare of Nebraska and would not protect property interests. The
25 24-months can also be extended in the case of "force majeure." My understanding
26 is that force majeure is often used to insulate a party to a contract when events
27 occur that are completely out of their control. In TransCanada's easement this is
28 expanded to include "without limitation...availability of labor and materials."
29 Extending this language to labor and materials is problematic because these are

two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two

1 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
2 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
3 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
4 copy of the Federal Court Complaint is here as **Attachment No. 4**

5 **Q: What is your next concern with the Easement language?**

6 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
7 they choose unless 1) any Landowner use interferes in any way with
8 TransCanada's exercise of any of its rights within the Easement, or 2)
9 TransCanada decides to take any action on the property it deems necessary to
10 prevent injury, endangerment or interference with anything TransCanada deems
11 necessary to do on the property. Landowner is also forbidden from excavating
12 without prior authorization by TransCanada. So my understanding is that
13 TransCanada will unilaterally determine what Landowner can and can't do based
14 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
15 could also completely deny my request to excavate. Further, TransCanada retains
16 all "privileges necessary or convenient for the full use of the rights" granted to
17 them in the Easement. Again, TransCanada unilaterally can decide to the
18 detriment of the property rights of Landowner what TransCanada believes is
19 necessary or convenient for it. And there is no option for any additional
20 compensation to landowner for any right exercised by TransCanada that leads to
21 the removal of trees or plants or vegetation or buildings or structures or facilities
22 owned by Landowner of any kind. Such undefined and unilateral restrictions and
23 rights without having to compensate Landowner for such further destruction or
24 losses are not conducive to the protection of property rights or economic interest.

25 **Q: What is the next concern you have?**

26 A: The Easement also allows some rights for Landowner but restricts them at the
27 same time and again at the sole and unilateral decision making of TransCanada.
28 TransCanada will determine if the actions of Landowner might in anyway
29 endanger or obstruct or interfere with TransCanada's full use of the Easement or

any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel “within and along Easement Area on foot or in vehicle or machinery...” Further at TransCanada’s sole discretion it will retain the rights to prevent any landowner activity that it thinks may “unreasonably impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner’s land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase “where rock is encountered” mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada’s preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for

documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada’s taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime

1 to anyone. This also means that any buyer of the easement could do the same to a
2 third buyer and so on forever. There is no change of control or sale provision in
3 place to protect the Landowner or Nebraska or to provide compensation for such
4 change of control or ownership. It is not conducive to the protection of property
5 rights or economic interests to allow unilateral unrestricted sale of the Easement
6 thereby forcing upon the Landowner and our State a new unknown Easement
7 owner.

8 **Q: What is the next concern you have with the Easement language?**

9 **A:** There are many terms in the Easement that are either confusing or undefined terms
10 that are without context as to whether or not the Landowner would have any say
11 so in determining what these terms mean or if the evaluation is solely in
12 TransCanada's control. Some of these vague undefined terms are as follows:

- 13 i. "pipeline installation activities"
- 14 ii. "availability of labor and materials"
- 15 iii. "commercially reasonable costs and expenses"
- 16 iv. "reasonably anticipated and foreseeable costs and expenses"
- 17 v. "yield loss damages"
- 18 vi. "diminution in the value of the property"
- 19 vii. "substantially same condition"
- 20 viii. "an actual or potential hazard"
- 21 ix. "efficient"
- 22 x. "convenient"
- 23 xi. "endangered"
- 24 xii. "obstructed"
- 25 xiii. "injured"
- 26 xiv. "interfered with"
- 27 xv. "impaired"
- 28 xvi. "suitable crossings"
- 29 xvii. "where rock is encountered"

xviii. “as nearly as practicable”

xix. “pre-construction position”

xx. “pre-construction grade”

xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada’s proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline’s impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: Did TransCanada ever offer you financial compensation for the rights that they sought to obtain in your land, and for what they sought to prevent you and any future land owner of your property from doing in the future?

A: Yes, we received an offer from them.

1 **Q:** As the owner of the land in question and as the person who knows it better
2 than anyone else, do you believe that TransCanada offered you just, or fair,
3 compensation for all of what they proposed to take from you so that their tar
4 sands pipeline could be located across your property?

5 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
6 offer for all the potential impacts and effects and the rights that I'm giving up, and
7 what we will be prevented from doing in the future and how their pipeline would
8 impact my property for ever and ever.

9 **Q:** Has TransCanada at any time offered to compensate you annually, such as
10 wind farm projects do, for the existence of their potential tar sands pipeline
11 across your property.

12 **A:** No, never.

13 **Q:** At any time did TransCanada present you with or request that you, as the
14 owner of the land in question, sign and execute a document called, "Advanced
15 Release of Damage Claims and Indemnity Agreement?"

16 **A:** Yes, they did and it was included in the County Court lawsuit against us.

17 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
18 "Advanced Release of Damage Claims and Indemnity Agreement?"

19 **A:** Yes, it is.

20 **Q:** What was your understanding of that document?

21 **A:** When I read that document in the plain language of that document, it was my
22 understanding that TransCanada was attempting to pay me a very small amount at
23 that time in order for me to agree to give up my rights to be compensated from
24 them in the future related to any damage or impact they may have upon my
25 property "arising out of, in connection with, or alleged to resulted from
26 construction or surveying over, under or on" my land.

27 **Q:** Did you ever sign that document?

28 **A:** No, I did not.

29 **Q:** Why not?

1 A: Because I do not believe that it is fair or just to try to get me to agree to a small
2 sum of money when I have no idea how bad the impacts or damages that they, or
3 their contractors, or subcontractors, or other agents or employees, may cause on
4 my land at any time in the future that resulted from the construction or surveying
5 or their activities upon my land.

6 **Q: When you reviewed this document, what did it make you feel?**

7 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
8 shield themselves against known and foreseeable impacts that their pipeline, and
9 the construction of it, would have upon my land. It made me feel that they knew it
10 was in their financial interest to pay me as little as possible to prevent me from
11 ever having the opportunity to seek fair compensation again, and that this must be
12 based upon their experience of unhappy landowners and situations in other places
13 where they have built pipelines.

14 **Q: Has TransCanada ever contacted you and specifically asked you if you**
15 **thought their proposed location of their proposed pipeline across your land**
16 **was in your best interest?**

17 A: No, they have not.

18 **Q: Has TransCanada ever contacted you and specifically asked you if you**
19 **thought their proposed location of their proposed pipeline across your land**
20 **was in the public interest of the State of Nebraska?**

21 A: No, they have not.

22 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
23 **Takings Clause?**

24 A: Yes, I am.

25 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
26 **an American citizens property?**

27 A: My understanding is that, according to the United States Constitution, that if the
28 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or
2 fairly.

3 **Q: Has TransCanada ever contacted you specially to explain the way in which**
4 **the public could use its proposed Keystone XL Pipeline?**

5 **A:** No, they have not.

6 **Q: Can you think of any way in which the public, that is the citizens of the State**
7 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
8 **Pipeline, as it dissects the State of Nebraska?**

9 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
10 public benefits from this pipeline in any way, how they can use it any way, or how
11 it's in the public interest in any way. By looking at the map, it is quite clear to me
12 that the only reason it's proposed to come through Nebraska, is that because we
13 are geographically in the way from between where the privately-owned Tar Sands
14 are located to where TransCanada wants to ship the Tar Sands to refineries in
15 Houston, Texas.

16 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
17 **crude petroleum, or oil and petroleum by-products that you would like to**
18 **ship in its pipeline?**

19 **A:** No, it has not.

20 **Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-**
21 **products that you, at this time or any time in the future, would desire to place**
22 **for transport within the proposed TransCanada Keystone XL Pipeline?**

23 **A:** No, I do not.

24 **Q: Do you know anyone in the state of Nebraska who would be able to ship any**
25 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
26 **products within the proposed TransCanada Keystone XL Pipeline?**

27 **A:** No, I do not. I've never heard of such a person or company like that.

28 **Q: Do you pay property taxes for the land that would be affected and impacted**
29 **at the proposed TransCanada Keystone XL Pipeline?**

1 A: Yes, I do.

2 **Q: Why do you pay property taxes on that land?**

3 A: Because that is the law. The law requires us to pay the property taxes as the owner
4 of that property.

5 **Q: Because you follow the law and pay property taxes, do you believe you**
6 **deserve any special consideration or treatment apart from any other person**
7 **or company that pays property taxes?**

8 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
9 just what you do.

10 **Q: Do you believe the fact that you pay property taxes entitles you to special**
11 **treatment of any kind, or special rights of any kind?**

12 A: No, of course not.

13 **Q: Do you believe the fact that you pay property taxes on your land would be**
14 **enough to qualify you to have the power of eminent domain to take land of**
15 **your neighbors or other people in your county, or other people across the**
16 **state of Nebraska?**

17 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
18 I expect an award for or any type of special consideration.

19 **Q: Have you at any time ever employed any person other than yourself?**

20 A: Well, yes I have.

21 **Q: Do you believe that the fact that you have, at some point in your life,**
22 **employed one or more other persons entitle you to any special treatment or**
23 **consideration above and beyond any other Nebraskan that has also employed**
24 **one or more persons?**

25 A: No, of course not.

26 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
27 **have at one point employed another person within this state, entitles you to**
28 **preferential treatment or consideration of any kind?**

1 A: No, of course not. If I choose to employ someone that decision is up to me. I
2 don't deserve any special treatment or consideration for that fact.

3 **Q: At the beginning of your statement, you briefly described your property that**
4 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
5 **give the Commissioners a sense of specifically how you believe the proposed**
6 **Keystone XL Pipeline and its preferred route, which proposes to go across**
7 **your land, how it would in your opinion based on your knowledge,**
8 **experience, and background of your land, affect it.**

9 A: Our fear is that future owners of the land, whether that is members of our family
10 or some other party, will be punished by any future farming practices. Farming
11 practices change all the time and who knows what will be in 5, 10, 20 or 50 years.
12 We do not want any repercussions coming back to members of our family for
13 something that future owners of the property may do.

14 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
15 **crude oil pipeline in its preferred location, or ultimate location across the**
16 **state of Nebraska?**

17 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
18 or even bullied around and being made to feel scared that they did not have any
19 options but to sign whatever papers TransCanada told them they had to. I am
20 aware of folks being threatened that their land would be taken if they didn't follow
21 what TransCanada was saying. I am aware of tactics to get people to sign
22 easements that I don't believe have any place in Nebraska or anywhere such as
23 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
24 landowners and convince them they should sign TransCanada's easement
25 agreements. I am aware of older folks and widows or widowers feeling they had
26 no choice but to sign TransCanada's Easement and they didn't know they could
27 fight or stand up for themselves. From a more practical standpoint, I am worried
28 that according to their answer to our Interrogatory No. 211, TransCanada only
29 owns and operates one (1) major oil pipeline. They simply do not have the

1 experience with this type of pipeline and that scares me. There are others but that
2 is what I can recollect at this time and if I remember more or my recollection is
3 refreshed I will share those with the Commissioners at the Hearing in August.

4 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
5 **landowner is reasonable or just?**

6 **A:** No, I do not.

7 **Q: Do you have any concern about limitations that the construction of this**
8 **proposed pipeline across your affected land would prevent construction of**
9 **future structures upon the portion of your land affected by the proposed**
10 **easement and immediately surrounding areas?**

11 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
12 structures directly across or touching the easement, and it would be unwise and I
13 would be uncomfortable to build anything near the easement for fear of being
14 blamed in the future should any damage or difficulty result on my property in
15 regards to the pipeline.

16 **Q: Do you think such a restriction would impact you economically?**

17 **A:** Well yes, of course.

18 **Q: How do you think such a restriction would impact you economically?**

19 **A:** The future of this land may not be exactly how it's being used as of this moment,
20 and having the restrictions and limiting my ability to develop my land in certain
21 ways presents a huge negative economic impact on myself, my family, and any
22 potential future owner of the property. You have no idea how I or the future owner
23 may want to use this land in the future or the other land across Nebraska
24 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
25 ago it would have been hard to imagine all the advances that we have now or how
26 things change. Because the Easement is forever and TransCanada gets the rights in
27 my land forever we have to think with a very long term view. By placing their
28 pipeline on under across and through my land that prevents future development
29 which greatly negatively impacts future taxes and tax revenue that could have

1 been generated by the County and State but now will not. When you look at the
2 short blip of economic activity that the two years of temporary construction efforts
3 may bring, that is far outweighed by the perpetual and forever loss of opportunity
4 and restrictions TransCanada is forcing upon us and Nebraska.

5 **Q: Do you have any concerns about the environmental impact of the proposed**
6 **pipeline?**

7 A: Yes, I do.

8 **Q: What are some of those concerns?**

9 A: As an affected land owner and Nebraskan, I am concerned that any construction,
10 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
11 a detrimental impact upon the environment of my land specifically, as well as the
12 lands near my land and surrounding the proposed pipeline route.

13 **Q: Do you have any other environmental concerns?**

14 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
15 construction and/or maintenance and operation. I am concerned about spills and
16 leaks that TransCanada has had in the past and will have in the future. This could
17 be catastrophic to my operations or others and to my county and the State.

18 **Q: Do you have any thoughts regarding if there would be an impact upon the**
19 **natural resources on or near your property due to the proposed pipeline?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
22 resources of my land, and the lands near and surrounding the proposed pipeline
23 route.

24 **Q: Do you have any worries about potential impacts from the proposed pipeline**
25 **to the soil of your land, or land near you?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
28 land, as well as land along and surrounding the proposed pipeline route. This
29 includes, but is not limited to, the reasons that we discussed above of disturbing

1 the soil composition and makeup as it has naturally existed for thousands and
2 millions of years during the construction process, and any future maintenance or
3 removal process. I'm gravely concerned about the fertility and the loss of
4 economic ability of my property to grow the crops, or grow the grasses, or grow
5 whatever it is at that time they exist on my property or that I may want to grow in
6 the future, or that a future owner may want to grow. The land will never be the
7 same from as it exists now undisturbed to after it is trenched up for the proposed
8 pipeline.

9 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
10 **upon the groundwater over your land, or surrounding lands?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 groundwater of not only under my land, but also near and surrounding the pipeline
14 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
15 simple and it is simply too valuable to our State and the country to put at
16 unreasonable risk.

17 **Q: Do you have any concern about the potential impact of the proposed pipeline**
18 **upon the surface water on, or near or around your land?**

19 A: Yes, I have significant concerns that any construction, operation, and/or
20 maintenance of the proposed Keystone XL Pipeline would have detrimental
21 impact upon the surface water of not only within my property boundary, but along
22 and near and surrounding the pipeline route, and in fact, across the state of
23 Nebraska.

24 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
25 **upon the wildlife and plants, other than your growing crops on or near your**
26 **land?**

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the

wildlife and the plants, not only that are located on or can be found upon my land, but also near and along the proposed pipeline route.

Q: Do you have any concerns about the effects of the proposed pipeline upon the fair market value of your land?

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the fair market value at any point in the future, especially at that point in which I would need to sell the property, or someone in my family would need to sell the property. I do not believe, and certainly would not be willing to pay, the same price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 6, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

1 **Q:** Do you believe that TransCanada's preferred route as found on page 5 of its
2 Application, and as found on Attachment No. 7, here to your testimony, is in
3 the public interest of Nebraska?

4 **A:** No, I do not.

5 **Q:** Do you believe that the Keystone mainline alternative route as shown on
6 Attachment No. 7 included with your testimony here is a major oil pipeline
7 route that is in the public interest of Nebraska?

8 **A:** No, I do not.

9 **Q:** Do you believe the portion of the proposed pipeline within Nebraska as found
10 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

11 **A:** No, I do not.

12 **Q:** Do you believe there is any potential route for the proposed Keystone XL
13 Pipeline across, within, under, or through the State of Nebraska that is in the
14 public interest of the citizens of Nebraska?

15 **A:** No, I do not.

16 **Q:** Why do you hold that belief?

17 **A:** Because there simply is no public interest based on all of the factors that I am
18 aware and that I have read and that I have studied that this Commission is to
19 consider that would establish that a for-profit foreign-owned pipeline that simply
20 crosses Nebraska because we are geographically in the way between where tar
21 sands are in Canada to where it wants to ship it to in Texas could ever be in the
22 public interest of Nebraskans. We derive no benefit from this project. It is not for
23 public use. Nebraska is simply in the way and when all considerations are taken in
24 there is no net benefit of any kind for Nebraska should this project be placed in our
25 state. Even if there was some arguable "benefit" it is not enough to outweigh all
26 the negative impacts and concerns.

27 **Q:** What do you think about the applicant, TransCanada's argument that it's
28 preferred route for its proposed Keystone XL Pipeline is in the public interest

1 of Nebraska because it may bring temporary jobs during the construction
2 phase to Nebraska?

3 A: First of all, not all jobs are created equally. Most jobs that are created, whether
4 temporary or on a permanent basis, don't come with a project that has all the
5 potential and foreseeable negative impacts, many of which we have discussed here
6 and other witnesses throughout the course of this hearing have and will discuss. If
7 I decide to hire and employ someone to help me out in my farming or ranching
8 business, I've created a job but I haven't done so at the risk or detrimental impact
9 to my land or my town or my county or my state. And I've hired someone who is
10 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
11 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
12 jobs are not created equal. Additionally, I understand from what I'm familiar with
13 from TransCanada's own statements that the jobs numbers they originally touted
14 were determined to be a minute fraction of the permanent jobs that had been
15 projected. According to their answer to our Interrogatory No. 191, TransCanada
16 has created only thirty-four (34) jobs within Nebraska working specifically on
17 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
18 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
19 Further, according to their answer to Interrogatory No. 199, TransCanada would
20 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
21 constructed on its Preferred Route or its Mainline Alternative Route.

22 Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply
23 because it would cross your land?

24 A: No, absolutely not. I am opposed to this project because it is not in the public
25 interest, neither within my community nor within our state.

26 Q: Would you be happier if instead of crossing your land, this proposed pipeline
27 was to cross someone else's land?

28 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
29 the fear and anxiety and potential foreseeable risks and negative impacts that this

1 type of a project carrying this type of product brings foisted upon anyone in this
2 state or any other state.

3 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
4 **Pipeline to cross the state of Nebraska?**

5 A: I don't believe there is an intelligent route because as I have stated I don't believe
6 this project anywhere within Nebraska is within the public interest. However, if
7 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
8 had to go somewhere in the state of Nebraska, the only intelligent route I believe
9 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
10 preferred route and the mainline alternative routes are economic liabilities our
11 state cannot risk.

12 **Q: What do you rely upon to make that statement?**

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners along that route and have
19 relationships with them. Fourth, that route avoids our most sensitive soils, the
20 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
21 Aquifer. Sixth, they have already studied that route and previously offered it as an
22 alternative. Seventh, it just makes the most sense that as a state we would have
23 some intelligent policy of energy corridors and co-locating this type of
24 infrastructure near each other.

25 **Q: Do you have any other concerns you would like to reiterate or can think of at**
26 **this time you would like the Commissioners to understand?**

27 A: Yes. We also have concerns over the pipeline location in our area of Antelope
28 County because of the development of 169 wind towers that are scheduled to be
29 constructed this year. They have been known to cause vibrations and low

1 frequency noise which interferes with people and their health. Will these same
2 problems cause concerns to the pipeline? And what about all their interconnecting
3 lines to substations and other towers? Antelope County is updating their Zoning
4 Regulations and will not be putting in language for any local control as to buffer
5 zones for any type of pipelines. Without any local control we are at the mercy of
6 the Federal Government. As for the pipeline itself, we have the same concerns as
7 others that are opposed. The KXL is not a public use pipeline. We will not
8 benefit from it. We will not be able to tap into it for some oil. There is a lot of talk
9 about all the jobs it will create. NOT. All the jobs will be professional pipe fitters
10 who will travel with the pipe line as it progressively moves taking the jobs with
11 them. While those workers are in our area they will be using our roads, schools,
12 parks and stores but will not be paying any taxes like the residents of the county
13 do. Any permanent jobs will come long after the construction is over and will
14 only be a handful at most. Where will all these workers live? There isn't enough
15 housing now plus if there are still wind tower works in the area the housing will be
16 even more critical. If they live in campers, will they over take our local
17 campground and drive away the tourists? Will they set up their own little village?
18 There in itself lies other issues. Water, sewage, electric. And what about the
19 contents of the pipeline itself? Is KXL going to come in and train the EMT's,
20 firefighters and landowners in how to handle a leak? If the stuff is as toxic as has
21 been stated then everyone along the route needs to know what to do and how to
22 contain the leak. Where would clean up resources come from? Will there be local
23 clean up stations? Will supplies have to be brought in from other states? How
24 long will that take? There are parcels of land in Antelope County where the
25 ground water lies between 3-5 feet below the surface. What happens if the leak is
26 close to those areas? The roads in Antelope county are already in bad shape. The
27 wind tower construction has caused major damage in the southern half of the
28 county and now they are coming to the central and northern part. Then we are
29 supposed to put up with pipeline construction!!! Get me a helicopter so I don't

1 have to drive over them any more. If they have to put them back to how they
2 found them, we are in deep trouble. The County board thinks all the revenue from
3 the wind towers and the future pipeline will solve all their financial woes. They
4 need to rethink this. In closing, we are opposed for many reasons and are thinking
5 of future generations that will ultimately be the ones to deal with any
6 consequences of leaks and end of use issues. There is more to life than money and
7 it seems that that is the driving factor for a lot of landowners and government
8 bodies.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
10 **like the Public Service Commissioners to consider in their review of**
11 **TransCanada's Application?**

12 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary. Additionally,
16 I have not had an adequate amount of time to receive and review all of
17 TransCanada's answers to our discovery and the discovery of others so it was
18 impossible to competently and completely react to that in my testimony here and I
19 reserve the right to also address anything related to discovery that has not yet
20 concluded as of the date I signed this document below. Lastly, certain documents
21 requested have not yet been produced by TransCanada and therefore I may have
22 additional thoughts on those I will also share at the hearing as needed.

23 **Q: What is it that you are requesting the Public Service Commissioners do in**
24 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
25 **across Nebraska?**

26 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
27 a temporary job spike that this project may bring to a few counties and beyond the
28 relatively small amount of taxes this proposed foreign pipeline would possibly
29 generate. And, instead think about the perpetual and forever impacts of this

1 pipeline as it would have on the landowners specifically, first and foremost, but
2 also thereby upon the entire state of Nebraska, and to determine that neither the
3 preferred route nor the Keystone mainline alternative route are in the public
4 interest of the citizens of the state of Nebraska. And if the Commissioners were
5 inclined to modify TransCanada's proposed routes and were to be inclined to grant
6 an application for a route in Nebraska, that the only potential route that would
7 make any intelligent sense whatsoever would be twinning or near paralleling of
8 the proposed KXL with the existing Keystone I pipeline. It simply does not make
9 sense to add yet another major oil pipeline crisscrossing our state creating new
10 pumping stations, creating new impacts on additional counties and communities
11 and going through all of the court processes with myself and other landowners like
12 me when this applicant already has relationships with the landowners, the towns
13 and the communities along Keystone I, and that Keystone I is firmly outside of the
14 sand hills and a significantly further portion away from the heart of the Ogallala
15 Aquifer than the preferred route or the Keystone mainline alternative route.

16 **Q: Does Attachment No. 8 here contain other documents you are competent to**
17 **speak about that you wish to be part of your testimony and to discuss in more**
18 **detail as needed at the August 2017 Hearing?**

19 A: Yes.

20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

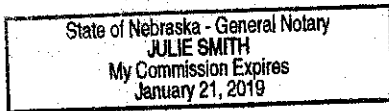
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**


Jerry Carpenter
Jerry Carpenter

Subscribed and Sworn to me before this 2nd day of June, 2017.

Julie Smith
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Charlayne “Char” Carpenter**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Charlayne Carpenter.

3 **Q: Are you an intervener in the Public Service Commission’s proceedings**
4 **regarding TransCanada’s application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse’s name please?**

16 A: Jerry Carpenter.

EXHIBIT

13

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1 **Q: If you have children how many do you have?**

2 A: 2

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: Our land that would be affected by the KXL pipeline has not been in "the family"
10 very long. Less than 10 years. It has a pivot on it and is very sandy soil. If the
11 route stays the same it will affect the NE corner of the quarter and take out shrubs
12 and trees for the most part but from what we understand the construction width
13 will be much wider than the pipe itself so will probably affect some portion of the
14 field. This corner sits at the intersection of two "sand trails" or minimum
15 maintenance roads. Will KXL replace trees and shrubs that are removed? While
16 we understand that they would not be replaced over top of the pipeline, they could
17 be replaced in other areas of the county. We have already lost many trees in our
18 area of the county because of the NPPD Neligh to Hoskins transmission line
19 project. We don't need to lose more because of a pipeline.

20 **Q: Do you earn any income from this land?**

21 A: Yes.

22 **Q: Have you depended on the income from your land to support your livelihood**
23 **or the livelihood of your family?**

24 A: Yes.

25 **Q: Have you ever in the past or have you thought about in the future leasing all**
26 **or a portion of your land in question here?**

27 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
28 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
29 all the restrictions and risks and potential negative impacts to farming or ranching

1 operations as opposed to land that did not have those same risks. If I was looking
2 to lease or rent ground I would pay more for comparable non-pipeline land than I
3 would for comparable pipeline land and I think most folks would think the same
4 way. This is another negative economic impact that affects the landowner and the
5 county and the state and will forever and ever should TransCanada's preferred or
6 mainline alternative routes be approved. If they were to twin or closely parallel to
7 Keystone I the vast majority of landowners would be those that already have a
8 pipeline so there would be considerable less new incremental negative impacts.

9 **Q: Do you have similar concerns about selling the land?**

10 A: Well I hope not to have to sell the land in my lifetime but times change and you
11 never know what is around the corner and yes I am concerned that if another piece
12 of ground similar to mine were for sale and it did not have the pipeline and mine
13 did that I would have a lower selling price. I think this would be true for pipeline
14 ground on both the preferred and mainline alternative routes.

15 **Q: What is your intent with your land after you die?**

16 A: Like I said I hope not to have to sell and I hope that it stay in the family for years
17 to come but I have thought about getting out if this pipeline were to come through.

18 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
19 **Pipeline would cross the land described above and owned by you?**

20 A: Yes.

21 **Q: Were you or an entity for which you are a member, shareholder, or director**
22 **previously sued by TransCanada Keystone Pipeline, LP?**

23 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
24 petition for condemnation against our land so it could place its proposed pipeline
25 within an easement that it wanted to take from us on our land.

26 **Q: Did you defend yourself and your land in that condemnation action?**

27 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
28 and expenses in our resistance of TransCanada's lawsuit against us.

1 **Q:** **Has TransCanada reimbursed you for any of your expenses or costs for fees**
2 **incurred?**

3 **A:** No, they have not.

4 **Q:** **In its lawsuit against you, did TransCanada identify the amount of your**
5 **property that it wanted to take for its proposed pipeline?**

6 **A:** The lawsuit against us stated they would take the amount of property that is
7 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
8 and equipment reasonably necessary to operate the pipeline.

9 **Q:** **Did TransCanada define what they meant by “property that is reasonably**
10 **necessary”?**

11 **A:** No, they did not.

12 **Q:** **Did TransCanada in its lawsuit against you, identify the eminent domain**
13 **property portion of your land?**

14 **A:** Yes, they did.

15 **Q:** **Did TransCanada describe what rights it proposed to take related to the**
16 **eminent domain property on your land?**

17 **A:** Yes, they did.

18 **Q:** **What rights that they proposed to take did they describe?**

19 **A:** TransCanada stated that the eminent domain property will be used to “lay, relay,
20 operate, and maintain the pipeline and the plant and equipment reasonably
21 necessary to operate the pipeline, specifically including surveying, laying,
22 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
23 reconstructing, removing and abandoning one pipeline, together with all fittings,
24 cathodic protection equipment, pipeline markers, and all their equipment and
25 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
26 petroleum products, and all by-products thereof.”

27 **Q:** **Prior to filing an eminent domain lawsuit to take your land that**
28 **TransCanada identified, do you believe they attempted to negotiate in good**
29 **faith with you?**

1 A: No, I do not.

2 Q: Did TransCanada at any time approach you with or deliver to you their
3 proposed easement and right-of-way agreement?

4 A: Yes, they did.

5 Q: At the time you reviewed TransCanada's easement and right-of-way
6 agreement, did you understand that they would be purchasing a fee title
7 interest in your property or that they were taking something else?

8 A: I understood that they proposed to have the power to take both a temporary
9 construction easement that could last for a certain period of time and then also a
10 permanent easement which they described to be 50 feet across or in width, and
11 that would run the entire portion of my property from where a proposed pipeline
12 would enter my property until where it would exit the property.

13 Q: Is the document included with your testimony here as Attachment No. 3, a
14 true and accurate copy of TransCanada's proposed Easement and Right-of-
15 Way agreement that they included with their condemnation lawsuit against
16 you?

17 A: Yes, it is.

18 Q: Have you had an opportunity to review TransCanada's proposed Easement
19 and Right-of-Way agreement?

20 A: Yes, I have.

21 Q: What is your understanding of the significance of the Easement and Right-of-
22 Way agreement as proposed by TransCanada?

23 A: My understanding is that this is the document that will govern all of the rights and
24 obligations and duties as well as the limitations of what I can and cannot do and
25 how I and any future landowner and any person I invite to come onto my property
26 must behave as well as what TransCanada is and is not responsible for and how
27 they can use my land.

28 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
29 agreement do you have any concerns about any portions of it or any of the

1 language either included in the document or missing from the proposed
2 document?

3 A: Yes, I have a number of significant concerns and worries about the document and
4 how the language included and the language not included potentially negatively
5 impacts my land and thereby potentially negatively impacts my community and
6 my state.

7 Q: I would like you to walk the Commissioners through each and every one of
8 your concerns about TransCanada's proposed Easement and Right-of-Way
9 agreement so they can develop an understanding of how that language and
10 the terms of that contract, in your opinion, potentially negatively impacts you
11 and your land. So, if you can start at the beginning of that document and
12 let's work our way through it, okay?

13 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
14 Easement and Right-of-Way agreement and how it negatively could affect my
15 property rights and my economic interests.

16 Q: Okay, let's start with your first concern please.

17 A: The very first sentence talks about consideration or how much money they will
18 pay to compensate me for all of the known and unknown affects and all of the
19 rights I am giving up and for all the things they get to do to my land and for what
20 they will prevent me from doing on my land and they only will pay me one time at
21 the signing of the easement agreement. That is a huge problem.

22 Q: Explain to the Commissioners why that is a problem.

23 A: It is not fair to the landowner, the county, or the State. It is not fair to the
24 landowner because they want to have my land forever for use as they see fit so
25 they can make a daily profit from their customers. If I was to lease ground from
26 my neighbor I would typically pay twice a year every year as long as they granted
27 me the rights to use their land. That only makes sense – that is fair. If I was going
28 to rent a house in town I would typically pay monthly, every month until I gave up
29 my right to use that house. By TransCanada getting out on the cheap and paying

1 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
2 revenue collection on the money I would be paid and then pay taxes on and
3 contribute to this state and this country. It is money I would be putting back into
4 my local community both spending and stimulating the local economy and
5 generating more economic activity right here. Instead TransCanada's shareholders
6 keep all that money and it never finds its way to Nebraska.

7 **Q: What is your next concern?**

8 **A:** The first paragraph goes on to say Grantor, which is me the landowner, "does
9 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
10 limited partnership..." and I have no idea who that really is. I have no idea who is
11 forcing this pipeline on us or who the owners of the entities are, or what are the
12 assets backing this limited partnership, or who the general partner is, or who all
13 the limited partners are, and who makes up the ownership of the these partners or
14 the structure or any of the basic things you would want to know and understand if
15 you would want to do business with such an outfit. According to TransCanada's
16 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
17 liability company called TransCanada Keystone Pipeline GP, LLC is the general
18 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
19 basically nothing. That is really scary since the general partner has the liability but
20 virtually none of the ownership and who knows if it has any other assets.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who could become the owner of over 275 miles of**
23 **Nebraska land?**

24 **A:** No.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who will be operating and responsible for**
27 **approximately 275 miles of tar sands pipeline underneath and through**
28 **Nebraska land?**

29 **A:** No.

1 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
2 and the State of Nebraska of TransCanada's easement terms.

3 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
4 called "Grantee")..." and this concerns me because it would allow the easement to
5 be transferred or sold to someone or some company or country or who knows what
6 that I don't know and who we may not want to do business with. This pipeline
7 would be a huge asset for TransCanada and if they can sell to the highest bidder
8 that could have terrible impacts upon all of Nebraska depending upon who may
9 buy it and I don't know of any safeguards in place for us or the State to veto or
10 have any say so in who may own, operate, or be responsible for this pipeline in the
11 future.

12 **Q:** Do you think that type of uncertainty and lack of control over a major piece
13 of infrastructure crossing our State is in the public interest?

14 **A:** No, certainly not, in fact, just the opposite.

15 **Q:** What's next?

16 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
17 really concerns me. Why does the easement and right-of-way have to be perpetual
18 and permanent? That is the question myself and my family want an answer to.
19 Perpetual to me is like forever and that doesn't make sense.

20 **Q:** Why doesn't a perpetual Easement and Right-of-Way make sense to you?

21 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
22 data proving there is a perpetual supply of tar sands. I am not aware in
23 TransCanada's application where it proves there is a perpetual necessity for this
24 pipeline. My understanding of energy infrastructure like wind towers is they have
25 a decommission plan and actually take the towers down when they become
26 obsolete or no longer needed. Nothing manmade lasts forever. My land however
27 will, and I want my family or future Nebraska families to have that land as
28 undisturbed as possible and it is not in my interest or the public interest of

1 Nebraska to be forced to give up perpetual and permanent rights in the land for
2 this specific kind of pipeline project.

3 **Q: Okay, what is your next concern?**

4 A: The easement language includes all these things TransCanada can do and it says
5 "...abandoning in place..." so they can just leave this pipeline under my ground
6 until the end of time just sitting there while they are not using it, but I am still
7 prevented from doing on my land and using my land what I would like. If I owned
8 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
9 there. It doesn't make sense and it scares me and it is not in my interest or the
10 public interest of Nebraska to allow this.

11 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
12 **right?**

13 A: Yes.

14 **Q: So now on the second page of the Easement what are your concerns?**

15 A: Here the Easement identifies a 24-month deadline to complete construction of the
16 pipeline but has caveats that are undefined and ambiguous. The 24-month period
17 starts to run from the moment "actual pipeline installation activities" begin on
18 Landowners property. It appears that TransCanada would define this phrase as
19 needed. It would be wise to explain what types of TransCanada action constitutes
20 "installation activity" For instance, would the placement and storage of an
21 excavator or other equipment on or near the Easement property be an activity or
22 would earth have to be moved before the activity requirement is triggered. This
23 vague phrase is likely to lead to future disputes and litigation that is not in the best
24 interest of the welfare of Nebraska and would not protect property interests. The
25 24-months can also be extended in the case of "force majeure." My understanding
26 is that force majeure is often used to insulate a party to a contract when events
27 occur that are completely out of their control. In TransCanada's easement this is
28 expanded to include "without limitation...availability of labor and materials."
29 Extending this language to labor and materials is problematic because these are

two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two

1 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
2 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
3 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
4 copy of the Federal Court Complaint is here as **Attachment No. 4**

5 **Q: What is your next concern with the Easement language?**

6 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
7 they choose unless 1) any Landowner use interferes in any way with
8 TransCanada's exercise of any of its rights within the Easement, or 2)
9 TransCanada decides to take any action on the property it deems necessary to
10 prevent injury, endangerment or interference with anything TransCanada deems
11 necessary to do on the property. Landowner is also forbidden from excavating
12 without prior authorization by TransCanada. So my understanding is that
13 TransCanada will unilaterally determine what Landowner can and can't do based
14 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
15 could also completely deny my request to excavate. Further, TransCanada retains
16 all "privileges necessary or convenient for the full use of the rights" granted to
17 them in the Easement. Again, TransCanada unilaterally can decide to the
18 detriment of the property rights of Landowner what TransCanada believes is
19 necessary or convenient for it. And there is no option for any additional
20 compensation to landowner for any right exercised by TransCanada that leads to
21 the removal of trees or plants or vegetation or buildings or structures or facilities
22 owned by Landowner of any kind. Such undefined and unilateral restrictions and
23 rights without having to compensate Landowner for such further destruction or
24 losses are not conducive to the protection of property rights or economic interest.

25 **Q: What is the next concern you have?**

26 A: The Easement also allows some rights for Landowner but restricts them at the
27 same time and again at the sole and unilateral decision making of TransCanada.
28 TransCanada will determine if the actions of Landowner might in anyway
29 endanger or obstruct or interfere with TransCanada's full use of the Easement or

any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel “within and along Easement Area on foot or in vehicle or machinery...” Further at TransCanada’s sole discretion it will retain the rights to prevent any landowner activity that it thinks may “unreasonably impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner’s land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase “where rock is encountered” mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada’s preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for

documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada’s taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to an future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime

to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"

xviii. “as nearly as practicable”

xix. “pre-construction position”

xx. “pre-construction grade”

xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada’s proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline’s impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: Did TransCanada ever offer you financial compensation for the rights that they sought to obtain in your land, and for what they sought to prevent you and any future land owner of your property from doing in the future?

A: Yes, we received an offer from them.

1 **Q:** As the owner of the land in question and as the person who knows it better
2 than anyone else, do you believe that TransCanada offered you just, or fair,
3 compensation for all of what they proposed to take from you so that their tar
4 sands pipeline could be located across your property?

5 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
6 offer for all the potential impacts and effects and the rights that I'm giving up, and
7 what we will be prevented from doing in the future and how their pipeline would
8 impact my property for ever and ever.

9 **Q:** Has TransCanada at any time offered to compensate you annually, such as
10 wind farm projects do, for the existence of their potential tar sands pipeline
11 across your property.

12 **A:** No, never.

13 **Q:** At any time did TransCanada present you with or request that you, as the
14 owner of the land in question, sign and execute a document called, "Advanced
15 Release of Damage Claims and Indemnity Agreement?"

16 **A:** Yes, they did and it was included in the County Court lawsuit against us.

17 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
18 "Advanced Release of Damage Claims and Indemnity Agreement?"

19 **A:** Yes, it is.

20 **Q:** What was your understanding of that document?

21 **A:** When I read that document in the plain language of that document, it was my
22 understanding that TransCanada was attempting to pay me a very small amount at
23 that time in order for me to agree to give up my rights to be compensated from
24 them in the future related to any damage or impact they may have upon my
25 property "arising out of, in connection with, or alleged to resulted from
26 construction or surveying over, under or on" my land.

27 **Q:** Did you ever sign that document?

28 **A:** No, I did not.

29 **Q:** Why not?

1 A: Because I do not believe that it is fair or just to try to get me to agree to a small
2 sum of money when I have no idea how bad the impacts or damages that they, or
3 their contractors, or subcontractors, or other agents or employees, may cause on
4 my land at any time in the future that resulted from the construction or surveying
5 or their activities upon my land.

6 **Q: When you reviewed this document, what did it make you feel?**

7 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
8 shield themselves against known and foreseeable impacts that their pipeline, and
9 the construction of it, would have upon my land. It made me feel that they knew it
10 was in their financial interest to pay me as little as possible to prevent me from
11 ever having the opportunity to seek fair compensation again, and that this must be
12 based upon their experience of unhappy landowners and situations in other places
13 where they have built pipelines.

14 **Q: Has TransCanada ever contacted you and specifically asked you if you**
15 **thought their proposed location of their proposed pipeline across your land**
16 **was in your best interest?**

17 A: No, they have not.

18 **Q: Has TransCanada ever contacted you and specifically asked you if you**
19 **thought their proposed location of their proposed pipeline across your land**
20 **was in the public interest of the State of Nebraska?**

21 A: No, they have not.

22 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
23 **Takings Clause?**

24 A: Yes, I am.

25 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
26 **an American citizens property?**

27 A: My understanding is that, according to the United States Constitution, that if the
28 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or
2 fairly.

3 **Q:** Has TransCanada ever contacted you specially to explain the way in which
4 the public could use its proposed Keystone XL Pipeline?

5 **A:** No, they have not.

6 **Q:** Can you think of any way in which the public, that is the citizens of the State
7 of Nebraska, can directly use the proposed TransCanada Keystone XL
8 Pipeline, as it dissects the State of Nebraska?

9 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
10 public benefits from this pipeline in any way, how they can use it any way, or how
11 it's in the public interest in any way. By looking at the map, it is quite clear to me
12 that the only reason it's proposed to come through Nebraska, is that because we
13 are geographically in the way from between where the privately-owned Tar Sands
14 are located to where TransCanada wants to ship the Tar Sands to refineries in
15 Houston, Texas.

16 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
17 crude petroleum, or oil and petroleum by-products that you would like to
18 ship in its pipeline?

19 **A:** No, it has not.

20 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
21 products that you, at this time or any time in the future, would desire to place
22 for transport within the proposed TransCanada Keystone XL Pipeline?

23 **A:** No, I do not.

24 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
25 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
26 products within the proposed TransCanada Keystone XL Pipeline?

27 **A:** No, I do not. I've never heard of such a person or company like that.

28 **Q:** Do you pay property taxes for the land that would be affected and impacted
29 at the proposed TransCanada Keystone XL Pipeline?

1 A: Yes, I do.

2 **Q: Why do you pay property taxes on that land?**

3 A: Because that is the law. The law requires us to pay the property taxes as the owner
4 of that property.

5 **Q: Because you follow the law and pay property taxes, do you believe you**
6 **deserve any special consideration or treatment apart from any other person**
7 **or company that pays property taxes?**

8 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
9 just what you do.

10 **Q: Do you believe the fact that you pay property taxes entitles you to special**
11 **treatment of any kind, or special rights of any kind?**

12 A: No, of course not.

13 **Q: Do you believe the fact that you pay property taxes on your land would be**
14 **enough to qualify you to have the power of eminent domain to take land of**
15 **your neighbors or other people in your county, or other people across the**
16 **state of Nebraska?**

17 **A: No. Like I said, paying property taxes is the law, it's nothing that I expect an**
18 **award for or any type of special consideration.**

19 **Q: Have you at any time ever employed any person other than yourself?**

20 A: Well, yes I have.

21 **Q: Do you believe that the fact that you have, at some point in your life,**
22 **employed one or more other persons entitle you to any special treatment or**
23 **consideration above and beyond any other Nebraskan that has also employed**
24 **one or more persons?**

25 A: No, of course not.

26 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
27 **have at one point employed another person within this state, entitles you to**
28 **preferential treatment or consideration of any kind?**

1 A: No, of course not. If I choose to employ someone that decision is up to me. I
2 don't deserve any special treatment or consideration for that fact.

3 **Q: At the beginning of your statement, you briefly described your property that**
4 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
5 **give the Commissioners a sense of specifically how you believe the proposed**
6 **Keystone XL Pipeline and its preferred route, which proposes to go across**
7 **your land, how it would in your opinion based on your knowledge,**
8 **experience, and background of your land, affect it.**

9 A: Our fear is that future owners of the land, whether that is members of our family
10 or some other party, will be punished by any future farming practices. Farming
11 practices change all the time and who knows what will be in 5, 10, 20 or 50 years.
12 We do not want any repercussions coming back to members of our family for
13 something that future owners of the property may do.

14 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
15 **crude oil pipeline in its preferred location, or ultimate location across the**
16 **state of Nebraska?**

17 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
18 or even bullied around and being made to feel scared that they did not have any
19 options but to sign whatever papers TransCanada told them they had to. I am
20 aware of folks being threatened that their land would be taken if they didn't follow
21 what TransCanada was saying. I am aware of tactics to get people to sign
22 easements that I don't believe have any place in Nebraska or anywhere such as
23 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
24 landowners and convince them they should sign TransCanada's easement
25 agreements. I am aware of older folks and widows or widowers feeling they had
26 no choice but to sign TransCanada's Easement and they didn't know they could
27 fight or stand up for themselves. From a more practical standpoint, I am worried
28 that according to their answer to our Interrogatory No. 211, TransCanada only
29 owns and operates one (1) major oil pipeline. They simply do not have the

1 experience with this type of pipeline and that scares me. There are others but that
2 is what I can recollect at this time and if I remember more or my recollection is
3 refreshed I will share those with the Commissioners at the Hearing in August.

4 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
5 **landowner is reasonable or just?**

6 **A:** No, I do not.

7 **Q: Do you have any concern about limitations that the construction of this**
8 **proposed pipeline across your affected land would prevent construction of**
9 **future structures upon the portion of your land affected by the proposed**
10 **easement and immediately surrounding areas?**

11 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
12 structures directly across or touching the easement, and it would be unwise and I
13 would be uncomfortable to build anything near the easement for fear of being
14 blamed in the future should any damage or difficulty result on my property in
15 regards to the pipeline.

16 **Q: Do you think such a restriction would impact you economically?**

17 **A:** Well yes, of course.

18 **Q: How do you think such a restriction would impact you economically?**

19 **A:** The future of this land may not be exactly how it's being used as of this moment,
20 and having the restrictions and limiting my ability to develop my land in certain
21 ways presents a huge negative economic impact on myself, my family, and any
22 potential future owner of the property. You have no idea how I or the future owner
23 may want to use this land in the future or the other land across Nebraska
24 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
25 ago it would have been hard to imagine all the advances that we have now or how
26 things change. Because the Easement is forever and TransCanada gets the rights in
27 my land forever we have to think with a very long term view. By placing their
28 pipeline on under across and through my land that prevents future development
29 which greatly negatively impacts future taxes and tax revenue that could have

1 been generated by the County and State but now will not. When you look at the
2 short blip of economic activity that the two years of temporary construction efforts
3 may bring, that is far outweighed by the perpetual and forever loss of opportunity
4 and restrictions TransCanada is forcing upon us and Nebraska.

5 **Q: Do you have any concerns about the environmental impact of the proposed**
6 **pipeline?**

7 A: Yes, I do.

8 **Q: What are some of those concerns?**

9 A: As an affected land owner and Nebraskan, I am concerned that any construction,
10 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
11 a detrimental impact upon the environment of my land specifically, as well as the
12 lands near my land and surrounding the proposed pipeline route.

13 **Q: Do you have any other environmental concerns?**

14 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
15 construction and/or maintenance and operation. I am concerned about spills and
16 leaks that TransCanada has had in the past and will have in the future. This could
17 be catastrophic to my operations or others and to my county and the State.

18 **Q: Do you have any thoughts regarding if there would be an impact upon the**
19 **natural resources on or near your property due to the proposed pipeline?**

20 A: Yes, I believe that any construction, operation, and/or maintenance of the
21 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
22 resources of my land, and the lands near and surrounding the proposed pipeline
23 route.

24 **Q: Do you have any worries about potential impacts from the proposed pipeline**
25 **to the soil of your land, or land near you?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
28 land, as well as land along and surrounding the proposed pipeline route. This
29 includes, but is not limited to, the reasons that we discussed above of disturbing

1 the soil composition and makeup as it has naturally existed for thousands and
2 millions of years during the construction process, and any future maintenance or
3 removal process. I'm gravely concerned about the fertility and the loss of
4 economic ability of my property to grow the crops, or grow the grasses, or grow
5 whatever it is at that time they exist on my property or that I may want to grow in
6 the future, or that a future owner may want to grow. The land will never be the
7 same from as it exists now undisturbed to after it is trenched up for the proposed
8 pipeline.

9 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
10 **upon the groundwater over your land, or surrounding lands?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 groundwater of not only under my land, but also near and surrounding the pipeline
14 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
15 simple and it is simply too valuable to our State and the country to put at
16 unreasonable risk.

17 **Q: Do you have any concern about the potential impact of the proposed pipeline**
18 **upon the surface water on, or near or around your land?**

19 A: Yes, I have significant concerns that any construction, operation, and/or
20 maintenance of the proposed Keystone XL Pipeline would have detrimental
21 impact upon the surface water of not only within my property boundary, but along
22 and near and surrounding the pipeline route, and in fact, across the state of
23 Nebraska.

24 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
25 **upon the wildlife and plants, other than your growing crops on or near your**
26 **land?**

27 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
28 the proposed Keystone XL Pipeline would have a detrimental impact upon the

wildlife and the plants, not only that are located on or can be found upon my land, but also near and along the proposed pipeline route.

Q: Do you have any concerns about the effects of the proposed pipeline upon the fair market value of your land?

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the fair market value at any point in the future, especially at that point in which I would need to sell the property, or someone in my family would need to sell the property. I do not believe, and certainly would not be willing to pay, the same price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 6, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

1 **Q:** Do you believe that TransCanada's preferred route as found on page 5 of its
2 Application, and as found on Attachment No. 7, here to your testimony, is in
3 the public interest of Nebraska?

4 **A:** No, I do not.

5 **Q:** Do you believe that the Keystone mainline alternative route as shown on
6 Attachment No. 7 included with your testimony here is a major oil pipeline
7 route that is in the public interest of Nebraska?

8 **A:** No, I do not.

9 **Q:** Do you believe the portion of the proposed pipeline within Nebraska as found
10 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

11 **A:** No, I do not.

12 **Q:** Do you believe there is any potential route for the proposed Keystone XL
13 Pipeline across, within, under, or through the State of Nebraska that is in the
14 public interest of the citizens of Nebraska?

15 **A:** No, I do not.

16 **Q:** Why do you hold that belief?

17 **A:** Because there simply is no public interest based on all of the factors that I am
18 aware and that I have read and that I have studied that this Commission is to
19 consider that would establish that a for-profit foreign-owned pipeline that simply
20 crosses Nebraska because we are geographically in the way between where tar
21 sands are in Canada to where it wants to ship it to in Texas could ever be in the
22 public interest of Nebraskans. We derive no benefit from this project. It is not for
23 public use. Nebraska is simply in the way and when all considerations are taken in
24 there is no net benefit of any kind for Nebraska should this project be placed in our
25 state. Even if there was some arguable "benefit" it is not enough to outweigh all
26 the negative impacts and concerns.

27 **Q:** What do you think about the applicant, TransCanada's argument that it's
28 preferred route for its proposed Keystone XL Pipeline is in the public interest

1 of Nebraska because it may bring temporary jobs during the construction
2 phase to Nebraska?

3 A: First of all, not all jobs are created equally. Most jobs that are created, whether
4 temporary or on a permanent basis, don't come with a project that has all the
5 potential and foreseeable negative impacts, many of which we have discussed here
6 and other witnesses throughout the course of this hearing have and will discuss. If
7 I decide to hire and employ someone to help me out in my farming or ranching
8 business, I've created a job but I haven't done so at the risk or detrimental impact
9 to my land or my town or my county or my state. And I've hired someone who is
10 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
11 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
12 jobs are not created equal. Additionally, I understand from what I'm familiar with
13 from TransCanada's own statements that the jobs numbers they originally touted
14 were determined to be a minute fraction of the permanent jobs that had been
15 projected. According to their answer to our Interrogatory No. 191, TransCanada
16 has created only thirty-four (34) jobs within Nebraska working specifically on
17 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
18 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
19 Further, according to their answer to Interrogatory No. 199, TransCanada would
20 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
21 constructed on its Preferred Route or its Mainline Alternative Route.

22 Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply
23 because it would cross your land?

24 A: No, absolutely not. I am opposed to this project because it is not in the public
25 interest, neither within my community nor within our state.

26 Q: Would you be happier if instead of crossing your land, this proposed pipeline
27 was to cross someone else's land?

28 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
29 the fear and anxiety and potential foreseeable risks and negative impacts that this

1 type of a project carrying this type of product brings foisted upon anyone in this
2 state or any other state.

3 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
4 **Pipeline to cross the state of Nebraska?**

5 A: I don't believe there is an intelligent route because as I have stated I don't believe
6 this project anywhere within Nebraska is within the public interest. However, if
7 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
8 had to go somewhere in the state of Nebraska, the only intelligent route I believe
9 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
10 preferred route and the mainline alternative routes are economic liabilities our
11 state cannot risk.

12 **Q: What do you rely upon to make that statement?**

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners long that route and have
19 relationships with them. Fourth, that route avoids our most sensitive soils, the
20 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
21 Aquifer. Sixth, they have already studied that route and previously offered it as an
22 alternative. Seventh, it just makes the most sense that as a state we would have
23 some intelligent policy of energy corridors and co-locating this type of
24 infrastructure near each other.

25 **Q: Do you have any other concerns you would like to reiterate or can think of at**
26 **this time you would like the Commissioners to understand?**

27 A: Yes. We also have concerns over the pipeline location in our area of Antelope
28 County because of the development of 169 wind towers that are scheduled to be
29 constructed this year. They have been known to cause vibrations and low

1 frequency noise which interferes with people and their health. Will these same
2 problems cause concerns to the pipeline? And what about all their interconnecting
3 lines to substations and other towers? Antelope County is updating their Zoning
4 Regulations and will not be putting in language for any local control as to buffer
5 zones for any type of pipelines. Without any local control we are at the mercy of
6 the Federal Government. As for the pipeline itself, we have the same concerns as
7 others that are opposed. The KXL is not a public use pipeline. We will not
8 benefit from it. We will not be able to tap into it for some oil. There is a lot of talk
9 about all the jobs it will create. NOT. All the jobs will be professional pipe fitters
10 who will travel with the pipe line as it progressively moves taking the jobs with
11 them. While those workers are in our area they will be using our roads, schools,
12 parks and stores but will not be paying any taxes like the residents of the county
13 do. Any permanent jobs will come long after the construction is over and will
14 only be a handful at most. Where will all these workers live? There isn't enough
15 housing now plus if there are still wind tower works in the area the housing will be
16 even more critical. If they live in campers, will they over take our local
17 campground and drive away the tourists? Will they set up their own little village?
18 There in itself lies other issues. Water, sewage, electric. And what about the
19 contents of the pipeline itself? Is KXL going to come in and train the EMT's,
20 firefighters and landowners in how to handle a leak? If the stuff is as toxic as has
21 been stated then everyone along the route needs to know what to do and how to
22 contain the leak. Where would clean up resources come from? Will there be local
23 clean up stations? Will supplies have to be brought in from other states? How
24 long will that take? There are parcels of land in Antelope County where the
25 ground water lies between 3-5 feet below the surface. What happens if the leak is
26 close to those areas? The roads in Antelope county are already in bad shape. The
27 wind tower construction has caused major damage in the southern half of the
28 county and now they are coming to the central and northern part. Then we are
29 supposed to put up with pipeline construction!!! Get me a helicopter so I don't

1 have to drive over them any more. If they have to put them back to how they
2 found them, we are in deep trouble. The County board thinks all the revenue from
3 the wind towers and the future pipeline will solve all their financial woes. They
4 need to rethink this. In closing, we are opposed for many reasons and are thinking
5 of future generations that will ultimately be the ones to deal with any
6 consequences of leaks and end of use issues. There is more to life than money and
7 it seems that that is the driving factor for a lot of landowners and government
8 bodies.

9 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
10 **like the Public Service Commissioners to consider in their review of**
11 **TransCanada's Application?**

12 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
13 document below but other things may come to me or my memory may be
14 refreshed and I will add and address those things at the time of the Hearing in
15 August and address any additional items at that time as is necessary. Additionally,
16 I have not had an adequate amount of time to receive and review all of
17 TransCanada's answers to our discovery and the discovery of others so it was
18 impossible to competently and completely react to that in my testimony here and I
19 reserve the right to also address anything related to discovery that has not yet
20 concluded as of the date I signed this document below. Lastly, certain documents
21 requested have not yet been produced by TransCanada and therefore I may have
22 additional thoughts on those I will also share at the hearing as needed.

23 **Q: What is it that you are requesting the Public Service Commissioners do in**
24 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
25 **across Nebraska?**

26 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
27 a temporary job spike that this project may bring to a few counties and beyond the
28 relatively small amount of taxes this proposed foreign pipeline would possibly
29 generate. And, instead think about the perpetual and forever impacts of this

1 pipeline as it would have on the landowners specifically, first and foremost, but
2 also thereby upon the entire state of Nebraska, and to determine that neither the
3 preferred route nor the Keystone mainline alternative route are in the public
4 interest of the citizens of the state of Nebraska. And if the Commissioners were
5 inclined to modify TransCanada's proposed routes and were to be inclined to grant
6 an application for a route in Nebraska, that the only potential route that would
7 make any intelligent sense whatsoever would be twinning or near paralleling of
8 the proposed KXL with the existing Keystone I pipeline. It simply does not make
9 sense to add yet another major oil pipeline crisscrossing our state creating new
10 pumping stations, creating new impacts on additional counties and communities
11 and going through all of the court processes with myself and other landowners like
12 me when this applicant already has relationships with the landowners, the towns
13 and the communities along Keystone I, and that Keystone I is firmly outside of the
14 sand hills and a significantly further portion away from the heart of the Ogallala
15 Aquifer than the preferred route or the Keystone mainline alternative route.

16 **Q: Does Attachment No. 8 here contain other documents you are competent to**
17 **speak about that you wish to be part of your testimony and to discuss in more**
18 **detail as needed at the August 2017 Hearing?**

19 A: Yes.

20 **Q: Are all of your statements in your testimony provided above true and**
21 **accurate as of the date you signed this document to the best of your**
22 **knowledge?**

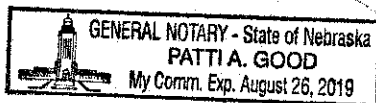
23 A: Yes, they are.

24 **Q: Thank you, I have no further questions at this time and reserve the right to**
25 **ask you additional questions at the August 2017 Hearing.**

Charlayne Carpenter
Charlayne Carpenter

Subscribed and Sworn to me before this 26th day of May, 2017.

Patti A. Good
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Tim Choat in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Boone County)

1 **Q: Please state your name.**

2 A: My name is Tim Choat. I am the Trustee of a Trust that own land affected by this
3 Application.

4 **Q: Are you an intervener in the Public Service Commission's proceedings**
5 **regarding TransCanada's application for approval of its proposed Keystone**
6 **XL tar sands pipeline across Nebraska?**

7 A: Yes, I am.

8 **Q: Do you own land in Nebraska, either directly or through an entity of which**
9 **you are an owner that could be affected by the proposed TransCanada**
10 **Keystone XL pipeline?**

11 A: Yes, I do and it is located in Boone County.

12 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
13 **photo(s) of your land in question here with the area of the proposed KXL**
14 **pipeline depicted?**

15 A: Yes.

16 **Q: What do you do for a living?**

EXHIBIT

14

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1 A: Farmer.

2 **Q: If you are you married tell us your spouse's name please?**

3 A: Kathy Choat.

4 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
5 **and or your family?**

6 A: Yes.

7 **Q: For the land that would be affected and impacted by the proposed KXL tar**
8 **sands pipeline give the Commissioners a sense how long the land has been in**
9 **your family and a little history of the land.**

10 A: Owned the land for 50 years. My Father purchased the farm from my Great Aunts
11 family in 1966. He spent his entire life as a good steward to the land – practicing
12 soil and erosion conservation in order to leave the ground in pristine condition for
13 future generations. Boone County FSA office has classified this farm as HEL
14 (highly erodible land) ground.

15 **Q: Do you earn any income from this land?**

16 A: Yes.

17 **Q: Have you depended on the income from your land to support your livelihood**
18 **or the livelihood of your family?**

19 A: Yes.

20 **Q: Have you ever in the past or have you thought about in the future leasing all**
21 **or a portion of your land in question here?**

22 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
23 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
24 all the restrictions and risks and potential negative impacts to farming or ranching
25 operations as opposed to land that did not have those same risks. If I was looking
26 to lease or rent ground I would pay more for comparable non-pipeline land than I
27 would for comparable pipeline land and I think most folks would think the same
28 way. This is another negative economic impact that affects the landowner and the
29 county and the state and will forever and ever should TransCanada's preferred or

1 mainline alternative routes be approved. If they were to twin or closely parallel to
2 Keystone I the vast majority of landowners would be those that already have a
3 pipeline so there would be considerable less new incremental negative impacts.

4 **Q: Do you have similar concerns about selling the land?**

5 A: Well I hope not to have to sell the land in my lifetime but times change and you
6 never know what is around the corner and yes I am concerned that if another piece
7 of ground similar to mine were for sale and it did not have the pipeline and mine
8 did that I would have a lower selling price. I think this would be true for pipeline
9 ground on both the preferred and mainline alternative routes.

10 **Q: What is your intent with your land after you die?**

11 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
12 to come but I have thought about getting out if this pipeline were to come through.

13 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
14 **Pipeline would cross the land described above and owned by you?**

15 A: Yes.

16 **Q: Were you or an entity for which you are a member, shareholder, or director**
17 **previously sued by TransCanada Keystone Pipeline, LP?**

18 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
19 petition for condemnation against our land so it could place its proposed pipeline
20 within an easement that it wanted to take from us on our land.

21 **Q: Did you defend yourself and your land in that condemnation action?**

22 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
23 and expenses in our resistance of TransCanada's lawsuit against us.

24 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
25 **incurred?**

26 A: No, they have not.

27 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
28 **property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?

6 A: No, they did not.

7 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?

9 A: Yes, they did.

10 Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?

12 A: Yes, they did.

13 Q: What rights that they proposed to take did they describe?

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?

25 A: No, I do not.

26 Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?

28 A: Yes, they did.

1 **Q:** At the time you reviewed TransCanada's easement and right-of-way
2 agreement, did you understand that they would be purchasing a fee title
3 interest in your property or that they were taking something else?

4 **A:** I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q:** Is the document included with your testimony here as Attachment No. 3, a
10 true and accurate copy of TransCanada's proposed Easement and Right-of-
11 Way agreement that they included with their condemnation lawsuit against
12 you?

13 **A:** Yes, it is.

14 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
15 and Right-of-Way agreement?

16 **A:** Yes, I have.

17 **Q:** What is your understanding of the significance of the Easement and Right-of-
18 Way agreement as proposed by TransCanada?

19 **A:** My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
25 agreement do you have any concerns about any portions of it or any of the
26 language either included in the document or missing from the proposed
27 document?

28 **A:** Yes, I have a number of significant concerns and worries about the document and
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 **A:** The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

generating more economic activity right here. Instead TransCanada's shareholders keep all that money and it never finds its way to Nebraska.

Q: What is your next concern?

A: The first paragraph goes on to say Grantor, which is me the landowner, "does hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited partnership..." and I have no idea who that really is. I have no idea who is forcing this pipeline on us or who the owners of the entities are, or what are the assets backing this limited partnership, or who the general partner is, or who all the limited partners are, and who makes up the ownership of the these partners or the structure or any of the basic things you would want to know and understand if you would want to do business with such an outfit. According to TransCanada's answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow the easement to

1 be transferred or sold to someone or some company or country or who knows what
2 that I don't know and who we may not want to do business with. This pipeline
3 would be a huge asset for TransCanada and if they can sell to the highest bidder
4 that could have terrible impacts upon all of Nebraska depending upon who may
5 buy it and I don't know of any safeguards in place for us or the State to veto or
6 have any say so in who may own, operate, or be responsible for this pipeline in the
7 future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 **A:** No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 **A:** The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 **A: Yes.**

9 **Q: So now on the second page of the Easement what are your concerns?**

10 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 Q: Is there any specific event or example you are aware of that makes this
22 concern more real for you?

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as Attachment No. 4.

29 Q: What is your next concern with the Easement language?

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 **A:** There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, "yield loss damages" should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada's proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline's**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 Q: Has TransCanada at any time offered to compensate you annually, such as
6 wind farm projects do, for the existence of their potential tar sands pipeline
7 across your property.

8 A: No, never.

9 Q: At any time did TransCanada present you with or request that you, as the
10 owner of the land in question, sign and execute a document called, "Advanced
11 Release of Damage Claims and Indemnity Agreement?"

12 A: Yes, they did and it was included in the County Court lawsuit.

13 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the
14 "Advanced Release of Damage Claims and Indemnity Agreement?"

15 A: Yes, it is.

16 Q: What was your understanding of that document?

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 Q: Did you ever sign that document?

24 A: No, I did not.

25 Q: Why not?

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** At the beginning of your statement, you briefly described your property that
28 would be impacted by the potential Keystone XL Pipeline. I would like you to
29 give the Commissioners a sense of specifically how you believe the proposed

1 **Keystone XL Pipeline and its preferred route, which proposes to go across**
2 **your land, how it would in your opinion based on your knowledge,**
3 **experience, and background of your land, affect it. So please share with the**
4 **Commissioners the characteristics of your land that you believe is important**
5 **for them to understand, while they evaluate TransCanada's application for a**
6 **route for its proposed pipeline to cross Nebraska and across your land,**
7 **specifically.**

8 A: My Father and I worked diligently to improve this farm. On the attached map, by
9 #1 and #2 in **Attachment No. 8** hereto, there are dams in place to control the run-
10 off water. If you notice the light brown areas on the map between the dams, these
11 are steep slopes that require careful and specific farming practices; the area that
12 TC wants to use goes directly on top of the flattest most productive table of this
13 farm. #3 is the irrigation well for the center pivot – less than a quarter ($\frac{1}{4}$) mile
14 from the proposed pipeline. #4 is a submersible well – approximately 85 to 90 feet
15 from the center of the proposed pipeline. This farm sits on top of a ridge that
16 divides 3 valleys - one to the north, one to the west and one to the south. With that
17 being said, the table where the proposed pipeline would go is at the very top,
18 subjected to the very highest risk of erosion along with all the tillage, irrigation
19 risks and foreseeable problems. **Hypothetically, over time, the soil erodes away**
20 **and the pipeline is now buried by only a foot or two and let's say they stop the**
21 **flow due to a problem and it is January with subzero temps; the line freezes and**
22 **the pipe expands with 2 elbows?? This is called 'coefficient of linear expansion'!**
23 **If this line leaks or ruptures in any direction, it will flow over several landowners'**
24 **ground – who is liable? And beyond just the spill or rupture event what about all**
25 **the collateral negative impacts?**

26 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
27 **crude oil pipeline in its preferred location, or ultimate location across the**
28 **state of Nebraska?**

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 Q: **Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 Q: **Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build many, if any, types of
25 structures directly across or touching the easement, and it would be unwise and I
26 would be uncomfortable to build anything near the easement for fear of being
27 blamed in the future should any damage or difficulty result on my property in
28 regards to the pipeline.

29 Q: **Do you think such a restriction would impact you economically?**

1 A: Well yes, of course.

2 **Q: How do you think such a restriction would impact you economically?**

3 A: The future of this land may not be exactly how it's being used as of this moment,
4 and having the restrictions and limiting my ability to develop my land in certain
5 ways presents a huge negative economic impact on myself, my family, and any
6 potential future owner of the property. You have no idea how I or the future owner
7 may want to use this land in the future or the other land across Nebraska
8 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
9 ago it would have been hard to imagine all the advances that we have now or how
10 things change. Because the Easement is forever and TransCanada gets the rights in
11 my land forever we have to think with a very long term view. By placing their
12 pipeline on under across and through my land that prevents future development
13 which greatly negatively impacts future taxes and tax revenue that could have
14 been generated by the County and State but now will not. When you look at the
15 short blip of economic activity that the two years of temporary construction efforts
16 may bring, that is far outweighed by the perpetual and forever loss of opportunity
17 and restrictions TransCanada is forcing upon us and Nebraska.

18 **Q: Do you have any concerns about the environmental impact of the proposed**
19 **pipeline?**

20 A: Yes, I do.

21 **Q: What are some of those concerns?**

22 A: As an affected land owner and Nebraskan, I am concerned that any construction,
23 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
24 a detrimental impact upon the environment of my land specifically, as well as the
25 lands near my land and surrounding the proposed pipeline route.

26 **Q: Do you have any other environmental concerns?**

27 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
28 construction and/or maintenance and operation. I am concerned about spills and

1 leaks that TransCanada has had in the past and will have in the future. This could
2 be catastrophic to my operations or others and to my county and the State.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 Q: Have you ever seen the document that's marked as Attachment No. 6, to your
7 testimony?

8 A: Yes, I have.

9 Q: Where have you seen that before?

10 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
12 believe the portion of the alternative route in Nebraska essentially twins or
13 parallels Keystone I.

14 Q: Do you believe that TransCanada's preferred route as found on page 5 of its
15 Application, and as found on Attachment No. 7, here to your testimony, is in
16 the public interest of Nebraska?

17 A: No, I do not.

18 Q: Do you believe that the Keystone mainline alternative route as shown on
19 Attachment No. 7 included with your testimony here is a major oil pipeline
20 route that is in the public interest of Nebraska?

21 A: No, I do not.

22 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
23 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

24 A: No, I do not.

25 Q: Do you believe there is any potential route for the proposed Keystone XL
26 Pipeline across, within, under, or through the State of Nebraska that is in the
27 public interest of the citizens of Nebraska?

28 A: No, I do not.

29 Q: Why do you hold that belief?

1 A: Because there simply is no public interest based on all of the factors that I am
2 aware and that I have read and that I have studied that this Commission is to
3 consider that would establish that a for-profit foreign-owned pipeline that simply
4 crosses Nebraska because we are geographically in the way between where tar
5 sands are in Canada to where it wants to ship it to in Texas could ever be in the
6 public interest of Nebraskans. We derive no benefit from this project. It is not for
7 public use. Nebraska is simply in the way and when all considerations are taken in
8 there is no net benefit of any kind for Nebraska should this project be placed in our
9 state. Even if there was some arguable “benefit” it is not enough to outweigh all
10 the negative impacts and concerns.

11 Q: What do you think about the applicant, TransCanada’s argument that it’s
12 preferred route for its proposed Keystone XL Pipeline is in the public interest
13 of Nebraska because it may bring temporary jobs during the construction
14 phase to Nebraska?

15 A: First of all, not all jobs are created equally. Most jobs that are created, whether
16 temporary or on a permanent basis, don’t come with a project that has all the
17 potential and foreseeable negative impacts, many of which we have discussed here
18 and other witnesses throughout the course of this hearing have and will discuss. If
19 I decide to hire and employ someone to help me out in my farming or ranching
20 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
21 to my land or my town or my county or my state. And I’ve hired someone who is
22 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
23 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
24 jobs are not created equal. Additionally, I understand from what I’m familiar with
25 from TransCanada’s own statements that the jobs numbers they originally touted
26 were determined to be a minute fraction of the permanent jobs that had been
27 projected. According to their answer to our Interrogatory No. 191, TransCanada
28 has created only thirty-four (34) jobs within Nebraska working specifically on
29 behalf of TransCanada and according to their answer to Interrogatory No. 196, as

of May 5, 2017 they only employ one (1) temporary working within Nebraska. Further, according to their answer to Interrogatory No. 199, TransCanada would only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was constructed on its Preferred Route or its Mainline Alternative Route.

Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply because it would cross your land?

A: No, absolutely not. I am opposed to this project because it is not in the public interest, neither within my community nor within our state.

Q: Would you be happier if instead of crossing your land, this proposed pipeline was to cross someone else's land?

A: No, absolutely not. I would get no joy in having a fellow citizen of my state have the fear and anxiety and potential foreseeable risks and negative impacts that this type of a project carrying this type of product brings foisted upon anyone in this state or any other state.

Q: Do you think there is any intelligent route for the proposed Keystone XL Pipeline to cross the state of Nebraska?

A: I don't believe there is an intelligent route because as I have stated I don't believe this project anywhere within Nebraska is within the public interest. However, if you are presenting a hypothetical that if this proposed KXL Pipeline absolutely had to go somewhere in the state of Nebraska, the only intelligent route I believe would be to twin or closely parallel the existing Keystone I Pipeline. Both the preferred route and the mainline alternative routes are economic liabilities our state cannot risk.

Q: What do you rely upon to make that statement?

A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I, already exists in that area is reason enough as it is not in our best interest or the public interests to have more major oil pipelines crisscrossing our state. Second, they have all the infrastructure already there in terms of relationships with the counties and local officials and first responders along that route. Third, they have

1 already obtained easements from all the landowners along that route and have
2 relationships with them. Fourth, that route avoids our most sensitive soils, the
3 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
4 Aquifer. Sixth, they have already studied that route and previously offered it as an
5 alternative. Seventh, it just makes the most sense that as a state we would have
6 some intelligent policy of energy corridors and co-locating this type of
7 infrastructure near each other.

8 **Q: Do you have any other concerns you would like to reiterate or can think of at**
9 **this time you would like the Commissioners to understand?**

10 **A: Yes. Decreased land value is a concern. TransCanada wants to correct their line by**
11 **installing 2 elbows. In my opinion, this increases my risk of leaks and failure – 3**
12 **fold. Current pivot system crosses the proposed pipeline with 5 towers. The**
13 landowners on Keystone 1 had trouble with gravity irrigation and center pivots
14 failing and getting stuck over the top of the pipeline due to not packing the soil
15 back in trench properly. **Abandonment by TransCanada is a liability to my family**
16 **and all future generations. If this pipeline is installed, will it adversely affect my**
17 **farm blanket insurance policy or my ability to borrow operating money?** I learned
18 how to cultivate and operate farm equipment as a young boy on this ground. I have
19 helped my Father irrigate and develop this farm my whole life and I have tried to
20 do my very best to follow in my Father's footsteps, to be a good steward to the
21 land – even more so in the past 6 years, with the passing of my Father. As Trustee,
22 it is not only my duty, but also my responsibility to continue the good farming
23 practices, just as my Father did his entire life. With all these stated potential
24 problems, surely there is a better location, away from the aquifer and our farm.

25 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
26 **like the Public Service Commissioners to consider in their review of**
27 **TransCanada's Application?**

28 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
29 document below but other things may come to me or my memory may be

1 refreshed and I will add and address those things at the time of the Hearing in
2 August and address any additional items at that time as is necessary. Additionally,
3 I have not had an adequate amount of time to receive and review all of
4 TransCanada's answers to our discovery and the discovery of others so it was
5 impossible to competently and completely react to that in my testimony here and I
6 reserve the right to also address anything related to discovery that has not yet
7 concluded as of the date I signed this document below. Lastly, certain documents
8 requested have not yet been produced by TransCanada and therefore I may have
9 additional thoughts on those I will also share at the hearing as needed.

10 **Q: What is it that you are requesting the Public Service Commissioners do in**
11 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
12 **across Nebraska?**

13 A: I am respectfully and humbly requesting that the Commissioners think far beyond
14 a temporary job spike that this project may bring to a few counties and beyond the
15 relatively small amount of taxes this proposed foreign pipeline would possibly
16 generate. And, instead think about the perpetual and forever impacts of this
17 pipeline as it would have on the landowners specifically, first and foremost, but
18 also thereby upon the entire state of Nebraska, and to determine that neither the
19 preferred route nor the Keystone mainline alternative route are in the public
20 interest of the citizens of the state of Nebraska. And if the Commissioners were
21 inclined to modify TransCanada's proposed routes and were to be inclined to grant
22 an application for a route in Nebraska, that the only potential route that would
23 make any intelligent sense whatsoever would be twinning or near paralleling of
24 the proposed KXL with the existing Keystone I pipeline. It simply does not make
25 sense to add yet another major oil pipeline crisscrossing our state creating new
26 pumping stations, creating new impacts on additional counties and communities
27 and going through all of the court processes with myself and other landowners like
28 me when this applicant already has relationships with the landowners, the towns
29 and the communities along Keystone I, and that Keystone I is firmly outside of the

1 sand hills and a significantly further portion away from the heart of the Ogallala
2 Aquifer than the preferred route or the Keystone mainline alternative route.

3 **Q: Does Attachment No. 8 here contain other documents you are competent to**
4 **speak about that you wish to be part of your testimony and to discuss in more**
5 **detail as needed at the August 2017 Hearing?**

6 **A: Yes.**

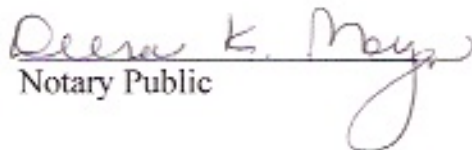
7 **Q: Are all of your statements in your testimony provided above true and**
8 **accurate as of the date you signed this document to the best of your**
9 **knowledge?**

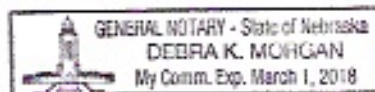
10 **A: Yes, they are.**

11 **Q: Thank you, I have no further questions at this time and reserve the right to**
12 **ask you additional questions at the August 2017 Hearing.**


Tim Choat

Subscribed and Sworn to me before this 30th day of May, 2017.


Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Tammy Cheatum in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Tammy Cheatum.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Antelope County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: Teacher & Farmer.

EXHIBIT

15

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1 **Q: If you are you married tell us your spouse's name please?**

2 A: Glen Cheatum

3 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
4 **and or your family?**

5 A. Yes.

6 **Q: For the land that would be affected and impacted by the proposed KXL tar**
7 **sands pipeline give the Commissioners a sense how long the land has been in**
8 **your family and a little history of the land.**

9 A: Our parents purchased this land about 50 years ago. I was the oldest of four
10 children at the age of four. My parents were our protectors. They worked tireless
11 hours to develop the land and provide for us. It was all of our way of life. I
12 remember one quarter of land had two-line irrigation while the other was dry land.
13 We cleared some trees, picked up sticks and raised corn and alfalfa while being
14 dairy and pig operators. We were able to purchase irrigation for each quarter.
15 After sixteen years of farming, my dad was killed in a car accident right on the
16 road by our farm. My mom continued to operate the farm and had my husband
17 farm the land. Her wish was to do everything she could to pass the farm on to my
18 siblings and me. Many times we told her that she could sell it because we wanted
19 her to live comfortably. She refused. Cancer took my mom seven years ago, so
20 now this land has been passed on to the second generation. As the oldest, I am
21 filling the shoes of the protector for my brother and two sisters. Yes, we are older
22 and can take care of ourselves, but they still look to me to make decisions about
23 the farm. My husband has now farmed this land longer than my dad had the
24 opportunity to do. These two quarters are our livelihood, but we also have to have
25 outside jobs to help support it. We rotate corn and soybeans on the two quarters.
26 The property taxes are paid each year and will be paid long after we are gone. Yet,
27 the pipeline owners will be finished paying taxes to Nebraska in just fifteen years.

28 **Q: Do you earn any income from this land?**

29 A: Yes.

1 **Q: Have you depended on the income from your land to support your livelihood**
2 **or the livelihood of your family?**

3 A: Yes.

4 **Q: Have you ever in the past or have you thought about in the future leasing all**
5 **or a portion of your land in question here?**

6 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
7 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
8 all the restrictions and risks and potential negative impacts to farming or ranching
9 operations as opposed to land that did not have those same risks. If I was looking
10 to lease or rent ground I would pay more for comparable non-pipeline land than I
11 would for comparable pipeline land and I think most folks would think the same
12 way. This is another negative economic impact that affects the landowner and the
13 county and the state and will forever and ever should TransCanada's preferred or
14 mainline alternative routes be approved. If they were to twin or closely parallel to
15 Keystone I the vast majority of landowners would be those that already have a
16 pipeline so there would be considerable less new incremental negative impacts.

17 **Q: Do you have similar concerns about selling the land?**

18 A: Well I hope not to have to sell the land in my lifetime but times change and you
19 never know what is around the corner and yes I am concerned that if another piece
20 of ground similar to mine were for sale and it did not have the pipeline and mine
21 did that I would have a lower selling price. I think this would be true for pipeline
22 ground on both the preferred and mainline alternative routes.

23 **Q: What is your intent with your land after you die?**

24 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
25 to come but I have thought about getting out if this pipeline were to come through.

26 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
27 **Pipeline would cross the land described above and owned by you?**

28 A: Yes.

1 **Q: Were you or an entity for which you are a member, shareholder, or director**
2 **previously sued by TransCanada Keystone Pipeline, LP?**

3 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
4 petition for condemnation against our land so it could place its proposed pipeline
5 within an easement that it wanted to take from us on our land.

6 **Q: Did you defend yourself and your land in that condemnation action?**

7 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
8 and expenses in our resistance of TransCanada's lawsuit against us.

9 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
10 **incurred?**

11 **A:** No, they have not.

12 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
13 **property that it wanted to take for its proposed pipeline?**

14 **A:** The lawsuit against us stated they would take the amount of property that is
15 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
16 and equipment reasonably necessary to operate the pipeline.

17 **Q: Did TransCanada define what they meant by "property that is reasonably**
18 **necessary"?**

19 **A:** No, they did not.

20 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
21 **property portion of your land?**

22 **A:** Yes, they did.

23 **Q: Did TransCanada describe what rights it proposed to take related to the**
24 **eminent domain property on your land?**

25 **A:** Yes, they did.

26 **Q: What rights that they proposed to take did they describe?**

27 **A:** TransCanada stated that the eminent domain property will be used to "lay, relay,
28 operate, and maintain the pipeline and the plant and equipment reasonably
29 necessary to operate the pipeline, specifically including surveying, laying,

1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
2 reconstructing, removing and abandoning one pipeline, together with all fittings,
3 cathodic protection equipment, pipeline markers, and all their equipment and
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
5 petroleum products, and all by-products thereof.”

6 **Q: Prior to filing an eminent domain lawsuit to take your land that**
7 **TransCanada identified, do you believe they attempted to negotiate in good**
8 **faith with you?**

9 A: No, I do not.

10 **Q: Did TransCanada at any time approach you with or deliver to you their**
11 **proposed easement and right-of-way agreement?**

12 A: Yes, they did.

13 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
14 **agreement, did you understand that they would be purchasing a fee title**
15 **interest in your property or that they were taking something else?**

16 A: I understood that they proposed to have the power to take both a temporary
17 construction easement that could last for a certain period of time and then also a
18 permanent easement which they described to be 50 feet across or in width, and
19 that would run the entire portion of my property from where a proposed pipeline
20 would enter my property until where it would exit the property.

21 **Q: Is the document included with your testimony here as Attachment No. 3, a**
22 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
23 **Way agreement that they included with their condemnation lawsuit against**
24 **you?**

25 A: Yes, it is.

26 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
27 **and Right-of-Way agreement?**

28 A: Yes, I have.

Q: What is your understanding of the significance of the Easement and Right-of-Way agreement as proposed by TransCanada?

A: My understanding is that this is the document that will govern all of the rights and obligations and duties as well as the limitations of what I can and cannot do and how I and any future landowner and any person I invite to come onto my property must behave as well as what TransCanada is and is not responsible for and how they can use my land.

Q: After reviewing TransCanada's proposed Easement and Right-of-Way agreement do you have any concerns about any portions of it or any of the language either included in the document or missing from the proposed document?

A: Yes, I have a number of significant concerns and worries about the document and how the language included and the language not included potentially negatively impacts my land and thereby potentially negatively impacts my community and my state.

Q: I would like you to walk the Commissioners through each and every one of your concerns about TransCanada's proposed Easement and Right-of-Way agreement so they can develop an understanding of how that language and the terms of that contract, in your opinion, potentially negatively impacts you and your land. So, if you can start at the beginning of that document and let's work our way through it, okay?

A: Yes, I'll be happy to express my concerns about TransCanada's proposed Easement and Right-of-Way agreement and how it negatively could affect my property rights and my economic interests.

Q: Okay, let's start with your first concern please.

A: The very first sentence talks about consideration or how much money they will pay to compensate me for all of the known and unknown affects and all of the rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at
2 the signing of the easement agreement. That is a huge problem.

3 **Q: Explain to the Commissioners why that is a problem.**

4 A: It is not fair to the landowner, the county, or the State. It is not fair to the
5 landowner because they want to have my land forever for use as they see fit so
6 they can make a daily profit from their customers. If I was to lease ground from
7 my neighbor I would typically pay twice a year every year as long as they granted
8 me the rights to use their land. That only makes sense – that is fair. If I was going
9 to rent a house in town I would typically pay monthly, every month until I gave up
10 my right to use that house. By TransCanada getting out on the cheap and paying
11 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
12 revenue collection on the money I would be paid and then pay taxes on and
13 contribute to this state and this country. It is money I would be putting back into
14 my local community both spending and stimulating the local economy and
15 generating more economic activity right here. Instead TransCanada's shareholders
16 keep all that money and it never finds its way to Nebraska.

17 **Q: What is your next concern?**

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
20 limited partnership..." and I have no idea who that really is. I have no idea who is
21 forcing this pipeline on us or who the owners of the entities are, or what are the
22 assets backing this limited partnership, or who the general partner is, or who all
23 the limited partners are, and who makes up the ownership of the these partners or
24 the structure or any of the basic things you would want to know and understand if
25 you would want to do business with such an outfit. According to TransCanada's
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but
2 virtually none of the ownership and who knows if it has any other assets.

3 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
4 **percent clear on exactly who could become the owner of over 275 miles of**
5 **Nebraska land?**

6 **A:** No.

7 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
8 **percent clear on exactly who will be operating and responsible for**
9 **approximately 275 miles of tar sands pipeline underneath and through**
10 **Nebraska land?**

11 **A:** No.

12 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
13 **and the State of Nebraska of TransCanada's easement terms.**

14 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
15 called "Grantee")..." and this concerns me because it would allow the easement to
16 be transferred or sold to someone or some company or country or who knows what
17 that I don't know and who we may not want to do business with. This pipeline
18 would be a huge asset for TransCanada and if they can sell to the highest bidder
19 that could have terrible impacts upon all of Nebraska depending upon who may
20 buy it and I don't know of any safeguards in place for us or the State to veto or
21 have any say so in who may own, operate, or be responsible for this pipeline in the
22 future.

23 **Q: Do you think that type of uncertainty and lack of control over a major piece**
24 **of infrastructure crossing our State is in the public interest?**

25 **A:** No, certainly not, in fact, just the opposite.

26 **Q: What's next?**

27 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.
2 Perpetual to me is like forever and that doesn't make sense.

3 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

4 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
5 data proving there is a perpetual supply of tar sands. I am not aware in
6 TransCanada's application where it proves there is a perpetual necessity for this
7 pipeline. My understanding of energy infrastructure like wind towers is they have
8 a decommission plan and actually take the towers down when they become
9 obsolete or no longer needed. Nothing manmade lasts forever. My land however
10 will, and I want my family or future Nebraska families to have that land as
11 undisturbed as possible and it is not in my interest or the public interest of
12 Nebraska to be forced to give up perpetual and permanent rights in the land for
13 this specific kind of pipeline project.

14 **Q: Okay, what is your next concern?**

15 A: The easement language includes all these things TransCanada can do and it says
16 "...abandoning in place..." so they can just leave this pipeline under my ground
17 until the end of time just sitting there while they are not using it, but I am still
18 prevented from doing on my land and using my land what I would like. If I owned
19 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
20 there. It doesn't make sense and it scares me and it is not in my interest or the
21 public interest of Nebraska to allow this.

22 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
23 **right?**

24 A: Yes.

25 **Q: So now on the second page of the Easement what are your concerns?**

26 A: Here the Easement identifies a 24-month deadline to complete construction of the
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period
28 starts to run from the moment "actual pipeline installation activities" begin on
29 Landowners property. It appears that TransCanada would define this phrase as

needed. It would be wise to explain what types of TransCanada action constitutes “installation activity” For instance, would the placement and storage of an excavator or other equipment on or near the Easement property be an activity or would earth have to be moved before the activity requirement is triggered. This vague phrase is likely to lead to future disputes and litigation that is not in the best interest of the welfare of Nebraska and would not protect property interests. The 24-months can also be extended in the case of “force majeure.” My understanding is that force majeure is often used to insulate a party to a contract when events occur that are completely out of their control. In TransCanada’s easement this is expanded to include “without limitation...availability of labor and materials.” Extending this language to labor and materials is problematic because these are two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of

1 this provision, you must consider the potentially extremely expensive fight a
2 Landowner would have over this question of whether or not damage was an act of
3 negligence. Putting this kind of potential liability upon the Landowner is
4 incredibly problematic and is detrimental to the protection of property rights. I
5 don't think this unilateral power which I can't do anything about as the landowner
6 is in the best economic interest of the land in question or the State of Nebraska for
7 landowners to be treated that way.

8 **Q: Is there any specific event or example you are aware of that makes this**
9 **concern more real for you?**

10 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
11 Nemaha County, Nebraska landowner farmers who accidentally struck two
12 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
13 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
14 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
15 copy of the Federal Court Complaint is here as **Attachment No. 4.**

16 **Q: What is your next concern with the Easement language?**

17 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
18 they choose unless 1) any Landowner use interferes in any way with
19 TransCanada's exercise of any of its rights within the Easement, or 2)
20 TransCanada decides to take any action on the property it deems necessary to
21 prevent injury, endangerment or interference with anything TransCanada deems
22 necessary to do on the property. Landowner is also forbidden from excavating
23 without prior authorization by TransCanada. So my understanding is that
24 TransCanada will unilaterally determine what Landowner can and can't do based
25 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
26 could also completely deny my request to excavate. Further, TransCanada retains
27 all "privileges necessary or convenient for the full use of the rights" granted to
28 them in the Easement. Again, TransCanada unilaterally can decide to the
29 detriment of the property rights of Landowner what TransCanada believes is

necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to

1 justify installing the pipeline 24 inches beneath the surface. The ability to use this
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively
3 affect Landowners property are not conducive to the protection of property rights.
4 A shallow pipeline is much more likely to become a danger and liability in the
5 future given farming operations and buried irrigation lines and other factors
6 common to the current typical agricultural uses of the land in question impacted
7 by TransCanada's preferred pipeline route.

8 **Q: What is the next concern you have with the Easement language?**

9 A: There are more vague concepts solely at the determination of TransCanada such as
10 "as nearly as practicable" and "pre-construction position" and "extent reasonably
11 possible." There is nothing here that defines this or provides a mechanism for
12 documenting or memorializing "pre-construction position" so as to minimize
13 costly legal battles or wasted Landowner time attempting to recreate the soil
14 condition on their fields or pasture. Such unilateral powers would negatively affect
15 Landowners property are not conducive to the protection of property rights or
16 economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada maintains the unilateral right to abandon the pipeline and all
19 appurtenances thereto in place on, under, across, or through Nebraska land at any
20 time it chooses. There is no provision for Landowner compensation for such
21 abandonment nor any right for the Landowner to demand removal. Such unilateral
22 powers would negatively affect Landowners property are not conducive to the
23 protection of property rights or economic interest.

24 **Q: What is the next concern you have with the Easement language?**

25 A: TransCanada has the power to unilaterally move or modify the location of any
26 Easement area whether permanent or temporary at their sole discretion.
27 Regardless, if Landowner has taken prior steps relative to their property in
28 preparation or planning of TransCanada's taking of the initial easement area(s),
29 the language here does not require TransCanada to compensate the Landowner if

1 they decide to move the easement anywhere on Landowners property. Such
2 unilateral powers would negatively affect Landowners property are not conducive
3 to the protection of property rights or economic interests.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement requires that all of the burdens and restrictions upon Landowner to
6 transfer and be applicable to any future owner of the Land in question without the
7 ability of the future Landowner to modify or negotiate any of the language in
8 question to which it will be held to comply.

9 **Q: What is the next concern you have with the Easement language?**

10 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
11 Easement to any person, company, country, etc. at their sole discretion at anytime
12 to anyone. This also means that any buyer of the easement could do the same to a
13 third buyer and so on forever. There is no change of control or sale provision in
14 place to protect the Landowner or Nebraska or to provide compensation for such
15 change of control or ownership. It is not conducive to the protection of property
16 rights or economic interests to allow unilateral unrestricted sale of the Easement
17 thereby forcing upon the Landowner and our State a new unknown Easement
18 owner.

19 **Q: What is the next concern you have with the Easement language?**

20 A: There are many terms in the Easement that are either confusing or undefined terms
21 that are without context as to whether or not the Landowner would have any say
22 so in determining what these terms mean or if the evaluation is solely in
23 TransCanada's control. Some of these vague undefined terms are as follows:

- 24 i. "pipeline installation activities"
- 25 ii. "availability of labor and materials"
- 26 iii. "commercially reasonable costs and expenses"
- 27 iv. "reasonably anticipated and foreseeable costs and expenses"
- 28 v. "yield loss damages"
- 29 vi. "diminution in the value of the property"

- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

1 **Q:** Based upon what you have shared with the Commission above regarding
2 TransCanada's proposed Easement terms and agreement, do you believe
3 those to be reasonable or just, under the circumstances of the pipeline's
4 impact upon you and your land?

5 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
6 discussed previously.

7 **Q:** Did TransCanada ever offer you financial compensation for the rights that
8 they sought to obtain in your land, and for what they sought to prevent you
9 and any future land owner of your property from doing in the future?

10 **A:** Yes, we received an offer from them.

11 **Q:** As the owner of the land in question and as the person who knows it better
12 than anyone else, do you believe that TransCanada offered you just, or fair,
13 compensation for all of what they proposed to take from you so that their tar
14 sands pipeline could be located across your property?

15 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
16 offer for all the potential impacts and effects and the rights that I'm giving up, and
17 what we will be prevented from doing in the future and how their pipeline would
18 impact my property for ever and ever.

19 **Q:** Has TransCanada at any time offered to compensate you annually, such as
20 wind farm projects do, for the existence of their potential tar sands pipeline
21 across your property.

22 **A:** No, never.

23 **Q:** At any time did TransCanada present you with or request that you, as the
24 owner of the land in question, sign and execute a document called, "Advanced
25 Release of Damage Claims and Indemnity Agreement?"

26 **A:** Yes, they did and it was included in the County Court lawsuit against us.

27 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
28 "Advanced Release of Damage Claims and Indemnity Agreement?"

29 **A:** Yes, it is.

1 **Q: What was your understanding of that document?**
2 A: When I read that document in the plain language of that document, it was my
3 understanding that TransCanada was attempting to pay me a very small amount at
4 that time in order for me to agree to give up my rights to be compensated from
5 them in the future related to any damage or impact they may have upon my
6 property “arising out of, in connection with, or alleged to resulted from
7 construction or surveying over, under or on” my land.
8 **Q: Did you ever sign that document?**
9 A: No, I did not.
10 **Q: Why not?**
11 A: Because I do not believe that it is fair or just to try to get me to agree to a small
12 sum of money when I have no idea how bad the impacts or damages that they, or
13 their contractors, or subcontractors, or other agents or employees, may cause on
14 my land at any time in the future that resulted from the construction or surveying
15 or their activities upon my land.
16 **Q: When you reviewed this document, what did it make you feel?**
17 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
18 shield themselves against known and foreseeable impacts that their pipeline, and
19 the construction of it, would have upon my land. It made me feel that they knew it
20 was in their financial interest to pay me as little as possible to prevent me from
21 ever having the opportunity to seek fair compensation again, and that this must be
22 based upon their experience of unhappy landowners and situations in other places
23 where they have built pipelines.
24 **Q: Has TransCanada ever contacted you and specifically asked you if you**
25 **thought their proposed location of their proposed pipeline across your land**
26 **was in your best interest?**
27 A: No, they have not.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in the public interest of the State of Nebraska?

4 A: No, they have not.

5 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
6 Takings Clause?

7 A: Yes, I am.

8 Q: What is your understanding of the Fifth Amendment as it relates to taking of
9 an American citizens property?

10 A: My understanding is that, according to the United States Constitution, that if the
11 government is going to take land for public use, then in that case, or by taking for
12 public use, it can only occur if the private land owner is compensated justly, or
13 fairly.

14 Q: Has TransCanada ever contacted you specially to explain the way in which
15 the public could use its proposed Keystone XL Pipeline?

16 A: No, they have not.

17 Q: Can you think of any way in which the public, that is the citizens of the State
18 of Nebraska, can directly use the proposed TransCanada Keystone XL
19 Pipeline, as it dissects the State of Nebraska?

20 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
21 public benefits from this pipeline in any way, how they can use it any way, or how
22 it's in the public interest in any way. By looking at the map, it is quite clear to me
23 that the only reason it's proposed to come through Nebraska, is that because we
24 are geographically in the way from between where the privately-owned Tar Sands
25 are located to where TransCanada wants to ship the Tar Sands to refineries in
26 Houston, Texas.

27 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
28 crude petroleum, or oil and petroleum by-products that you would like to
29 ship in its pipeline?

1 A: No, it has not.

2 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
3 products that you, at this time or any time in the future, would desire to place
4 for transport within the proposed TransCanada Keystone XL Pipeline?

5 A: No, I do not.

6 Q: Do you know anyone in the state of Nebraska who would be able to ship any
7 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
8 products within the proposed TransCanada Keystone XL Pipeline?

9 A: No, I do not. I've never heard of such a person or company like that.

10 Q: Do you pay property taxes for the land that would be affected and impacted
11 at the proposed TransCanada Keystone XL Pipeline?

12 A: Yes, I do.

13 Q: Why do you pay property taxes on that land?

14 A: Because that is the law. The law requires us to pay the property taxes as the owner
15 of that property.

16 Q: Because you follow the law and pay property taxes, do you believe you
17 deserve any special consideration or treatment apart from any other person
18 or company that pays property taxes?

19 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
20 just what you do.

21 Q: Do you believe the fact that you pay property taxes entitles you to special
22 treatment of any kind, or special rights of any kind?

23 A: No, of course not.

24 Q: Do you believe the fact that you pay property taxes on your land would be
25 enough to qualify you to have the power of eminent domain to take land of
26 your neighbors or other people in your county, or other people across the
27 state of Nebraska?

28 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
29 I expect an award for or any type of special consideration.

1 **Q: Have you at any time ever employed any person other than yourself?**

2 A: Well, yes I have.

3 **Q: Do you believe that the fact that you have, at some point in your life,**
4 **employed one or more other persons entitle you to any special treatment or**
5 **consideration above and beyond any other Nebraskan that has also employed**
6 **one or more persons?**

7 A: No, of course not.

8 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
9 **have at one point employed another person within this state, entitles you to**
10 **preferential treatment or consideration of any kind?**

11 A: No, of course not. If I choose to employ someone that decision is up to me. I
12 don't deserve any special treatment or consideration for that fact.

13 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
14 **crude oil pipeline in its preferred location, or ultimate location across the**
15 **state of Nebraska?**

16 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
17 or even bullied around and being made to feel scared that they did not have any
18 options but to sign whatever papers TransCanada told them they had to. I am
19 aware of folks being threatened that their land would be taken if they didn't follow
20 what TransCanada was saying. I am aware of tactics to get people to sign
21 easements that I don't believe have any place in Nebraska or anywhere such as
22 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
23 landowners and convince them they should sign TransCanada's easement
24 agreements. I am aware of older folks and widows or widowers feeling they had
25 no choice but to sign TransCanada's Easement and they didn't know they could
26 fight or stand up for themselves. From a more practical standpoint, I am worried
27 that according to their answer to our Interrogatory No. 211, TransCanada only
28 owns and operates one (1) major oil pipeline. They simply do not have the
29 experience with this type of pipeline and that scares me. There are others but that

1 is what I can recollect at this time and if I remember more or my recollection is
2 refreshed I will share those with the Commissioners at the Hearing in August.

3 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
4 **landowner is reasonable or just?**

5 **A: No, I do not.**

6 **Q: Do you have any concern about limitations that the construction of this**
7 **proposed pipeline across your affected land would prevent construction of**
8 **future structures upon the portion of your land affected by the proposed**
9 **easement and immediately surrounding areas?**

10 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
11 structures directly across or touching the easement, and it would be unwise and I
12 would be uncomfortable to build anything near the easement for fear of being
13 blamed in the future should any damage or difficulty result on my property in
14 regards to the pipeline.

15 **Q: Do you think such a restriction would impact you economically?**

16 **A:** Well yes, of course.

17 **Q: How do you think such a restriction would impact you economically?**

18 **A:** The future of this land may not be exactly how it's being used as of this moment,
19 and having the restrictions and limiting my ability to develop my land in certain
20 ways presents a huge negative economic impact on myself, my family, and any
21 potential future owner of the property. You have no idea how I or the future owner
22 may want to use this land in the future or the other land across Nebraska
23 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
24 ago it would have been hard to imagine all the advances that we have now or how
25 things change. Because the Easement is forever and TransCanada gets the rights in
26 my land forever we have to think with a very long term view. By placing their
27 pipeline on under across and through my land that prevents future development
28 which greatly negatively impacts future taxes and tax revenue that could have
29 been generated by the County and State but now will not. When you look at the

1 short blip of economic activity that the two years of temporary construction efforts
2 may bring, that is far outweighed by the perpetual and forever loss of opportunity
3 and restrictions TransCanada is forcing upon us and Nebraska.

4 **Q: Do you have any concerns about the environmental impact of the proposed**
5 **pipeline?**

6 A: Yes, I do.

7 **Q: What are some of those concerns?**

8 A: As an affected land owner and Nebraskan, I am concerned that any construction,
9 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
10 a detrimental impact upon the environment of my land specifically, as well as the
11 lands near my land and surrounding the proposed pipeline route.

12 **Q: Do you have any other environmental concerns?**

13 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
14 construction and/or maintenance and operation. I am concerned about spills and
15 leaks that TransCanada has had in the past and will have in the future. This could
16 be catastrophic to my operations or others and to my county and the State.

17 **Q: Do you have any thoughts regarding if there would be an impact upon the**
18 **natural resources on or near your property due to the proposed pipeline?**

19 A: Yes, I believe that any construction, operation, and/or maintenance of the
20 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
21 resources of my land, and the lands near and surrounding the proposed pipeline
22 route.

23 **Q: Do you have any worries about potential impacts from the proposed pipeline**
24 **to the soil of your land, or land near you?**

25 A: Yes, I believe that any construction, operation, and/or maintenance of the
26 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
27 land, as well as land along and surrounding the proposed pipeline route. This
28 includes, but is not limited to, the reasons that we discussed above of disturbing
29 the soil composition and makeup as it has naturally existed for thousands and

1 millions of years during the construction process, and any future maintenance or
2 removal process. I'm gravely concerned about the fertility and the loss of
3 economic ability of my property to grow the crops, or grow the grasses, or grow
4 whatever it is at that time they exist on my property or that I may want to grow in
5 the future, or that a future owner may want to grow. The land will never be the
6 same from as it exists now undisturbed to after it is trenched up for the proposed
7 pipeline.

8 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
9 **upon the groundwater over your land, or surrounding lands?**

10 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
11 the proposed Keystone XL Pipeline would have a detrimental impact upon the
12 groundwater of not only under my land, but also near and surrounding the pipeline
13 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
14 simple and it is simply too valuable to our State and the country to put at
15 unreasonable risk.

16 **Q: Do you have any concern about the potential impact of the proposed pipeline**
17 **upon the surface water on, or near or around your land?**

18 A: Yes, I have significant concerns that any construction, operation, and/or
19 maintenance of the proposed Keystone XL Pipeline would have detrimental
20 impact upon the surface water of not only within my property boundary, but along
21 and near and surrounding the pipeline route, and in fact, across the state of
22 Nebraska.

23 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
24 **upon the wildlife and plants, other than your growing crops on or near your**
25 **land?**

26 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
27 the proposed Keystone XL Pipeline would have a detrimental impact upon the
28 wildlife and the plants, not only that are located on or can be found upon my land,
29 but also near and along the proposed pipeline route.

Q: Do you have any concerns about the effects of the proposed pipeline upon the fair market value of your land?

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the fair market value at any point in the future, especially at that point in which I would need to sell the property, or someone in my family would need to sell the property. I do not believe, and certainly would not be willing to pay, the same price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 6, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

Q: Do you believe that TransCanada's preferred route as found on page 5 of its Application, and as found on Attachment No. 7, here to your testimony, is in the public interest of Nebraska?

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
7 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

8 A: No, I do not.

9 Q: Do you believe there is any potential route for the proposed Keystone XL
10 Pipeline across, within, under, or through the State of Nebraska that is in the
11 public interest of the citizens of Nebraska?

12 A: No, I do not.

13 Q: Why do you hold that belief?

14 A: Because there simply is no public interest based on all of the factors that I am
15 aware and that I have read and that I have studied that this Commission is to
16 consider that would establish that a for-profit foreign-owned pipeline that simply
17 crosses Nebraska because we are geographically in the way between where tar
18 sands are in Canada to where it wants to ship it to in Texas could ever be in the
19 public interest of Nebraskans. We derive no benefit from this project. It is not for
20 public use. Nebraska is simply in the way and when all considerations are taken in
21 there is no net benefit of any kind for Nebraska should this project be placed in our
22 state. Even if there was some arguable "benefit" it is not enough to outweigh all
23 the negative impacts and concerns.

24 Q: What do you think about the applicant, TransCanada's argument that it's
25 preferred route for its proposed Keystone XL Pipeline is in the public interest
26 of Nebraska because it may bring temporary jobs during the construction
27 phase to Nebraska?

28 A: First of all, not all jobs are created equally. Most jobs that are created, whether
29 temporary or on a permanent basis, don't come with a project that has all the

1 potential and foreseeable negative impacts, many of which we have discussed here
2 and other witnesses throughout the course of this hearing have and will discuss. If
3 I decide to hire and employ someone to help me out in my farming or ranching
4 business, I've created a job but I haven't done so at the risk or detrimental impact
5 to my land or my town or my county or my state. And I've hired someone who is
6 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
7 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
8 jobs are not created equal. Additionally, I understand from what I'm familiar with
9 from TransCanada's own statements that the jobs numbers they originally touted
10 were determined to be a minute fraction of the permanent jobs that had been
11 projected. According to their answer to our Interrogatory No. 191, TransCanada
12 has created only thirty-four (34) jobs within Nebraska working specifically on
13 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
14 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
15 Further, according to their answer to Interrogatory No. 199, TransCanada would
16 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
17 constructed on its Preferred Route or its Mainline Alternative Route.

18 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
19 **because it would cross your land?**

20 A: No, absolutely not. I am opposed to this project because it is not in the public
21 interest, neither within my community nor within our state.

22 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
23 **was to cross someone else's land?**

24 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
25 the fear and anxiety and potential foreseeable risks and negative impacts that this
26 type of a project carrying this type of product brings foisted upon anyone in this
27 state or any other state.

28 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
29 **Pipeline to cross the state of Nebraska?**

1 A: I don't believe there is an intelligent route because as I have stated I don't believe
2 this project anywhere within Nebraska is within the public interest. However, if
3 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
4 had to go somewhere in the state of Nebraska, the only intelligent route I believe
5 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
6 preferred route and the mainline alternative routes are economic liabilities our
7 state cannot risk.

8 **Q: What do you rely upon to make that statement?**

9 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
10 already exists in that area is reason enough as it is not in our best interest or the
11 public interests to have more major oil pipelines crisscrossing our state. Second,
12 they have the infrastructure already there in terms of relationships with the
13 counties and local officials and first responders along that route. Third, they have
14 already obtained easements from all the landowners along that route and have
15 relationships with them. Fourth, that route avoids our most sensitive soils, the
16 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
17 Aquifer. Sixth, they have already studied that route and previously offered it as an
18 alternative. Seventh, it just makes the most sense that as a state we would have
19 some intelligent policy of energy corridors and co-locating this type of
20 infrastructure near each other.

21 **Q: Do you have any other concerns you would like to reiterate or can think of at**
22 **this time you would like the Commissioners to understand?**

23 A: Yes. We have elected officials from inside the state of Nebraska to help protect
24 our state's well-being. You have a duty to do what is best for the citizens who live
25 in Nebraska. We are looking to you to protect us as landowners and citizens of
26 Nebraska. We are directly affected by the huge decision that is being placed before
27 you. Eminent domain being pursued for this project is being requested by a
28 private, for-profit company. Are you willing to give that authority to this company
29 knowing that they could easily turn around and sell it to another company? Canada

1 is a friendly neighbor. What if they entity who purchases the pipeline is North
2 Korea, China, Russia....would they be friendly? Why would you want to
3 jeopardize our state and our landowners for this possibility? Can we be certain that
4 this project is in the public interest of Nebraska or the rest of the United States, for
5 that matter? As with an interstate, a railroad or electricity, the citizens have access
6 to these entities. This pipeline has one goal...to transport tar sands to the gulf
7 where it will be put on the global market. There is less than half of the product that
8 would stay in the United States. Yet, landowners assume the liability and risk to
9 their land. We have a one-time payment; no removal of the pipe when/if the
10 pipeline ceases to operate; and the liability of damage to the pipeline. I have heard
11 and read many reports of people claiming that this is the safest pipeline; the risk is
12 minimal; I would welcome the chance to have it cross my land; etc. When I gave
13 reasons for wanting to do something to my parents that every other kid was doing,
14 they told me, "if they jumped off of a cliff, would you follow?" I guess I am not
15 ready to "jump off of the cliff" just because this seems like the right thing to do
16 according to most people. The Public Service Commission has the responsibility
17 to our state of Nebraska. Be our protectors. Give us reasons to believe in the
18 people whom we have elected. Be our voice. Give us the opportunity to pass on
19 our legacy. Use eminent domain for the way it was designed! These proposed
20 routes do not make sense.

21 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
22 **like the Public Service Commissioners to consider in their review of**
23 **TransCanada's Application?**

24 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
25 document below but other things may come to me or my memory may be
26 refreshed and I will add and address those things at the time of the Hearing in
27 August and address any additional items at that time as is necessary. Additionally,
28 I have not had an adequate amount of time to receive and review all of
29 TransCanada's answers to our discovery and the discovery of others so it was

1 impossible to competently and completely react to that in my testimony here and I
2 reserve the right to also address anything related to discovery that has not yet
3 concluded as of the date I signed this document below. Lastly, certain documents
4 requested have not yet been produced by TransCanada and therefore I may have
5 additional thoughts on those I will also share at the hearing as needed.

6 **Q: What is it that you are requesting the Public Service Commissioners do in**
7 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
8 **across Nebraska?**

9 A: I am respectfully and humbly requesting that the Commissioners think far beyond
10 a temporary job spike that this project may bring to a few counties and beyond the
11 relatively small amount of taxes this proposed foreign pipeline would possibly
12 generate. And, instead think about the perpetual and forever impacts of this
13 pipeline as it would have on the landowners specifically, first and foremost, but
14 also thereby upon the entire state of Nebraska, and to determine that neither the
15 preferred route nor the Keystone mainline alternative route are in the public
16 interest of the citizens of the state of Nebraska. And if the Commissioners were
17 inclined to modify TransCanada's proposed routes and were to be inclined to grant
18 an application for a route in Nebraska, that the only potential route that would
19 make any intelligent sense whatsoever would be twinning or near paralleling of
20 the proposed KXL with the existing Keystone I pipeline. It simply does not make
21 sense to add yet another major oil pipeline crisscrossing our state creating new
22 pumping stations, creating new impacts on additional counties and communities
23 and going through all of the court processes with myself and other landowners like
24 me when this applicant already has relationships with the landowners, the towns
25 and the communities along Keystone I, and that Keystone I is firmly outside of the
26 sand hills and a significantly further portion away from the heart of the Ogallala
27 Aquifer than the preferred route or the Keystone mainline alternative route.

1 **Q:** Are all of your statements in your testimony provided above true and
2 accurate as of the date you signed this document to the best of your
3 knowledge?

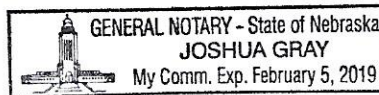
4 **A:** Yes, they are.

5 **Q:** Thank you, I have no further questions at this time and reserve the right to
6 ask you additional questions at the August 2017 Hearing.

Jimmy Cheatum
Tammy Cheatum

Subscribed and Sworn to me before this 31 day of May, 2017.

Joshua Gray
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Direct Testimony of
Larry Cleary in Support of Landowner
Intervenors

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Larry Cleary.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: Irene Brown Cleary – Deceased 8/15/1999

EXHIBIT

16

exhibitsticker.com

1 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
2 **and or your family?**

3 A: Yes.

4 **Q: How long the land has been in your family?**

5 A: Over 100 years, since 1892. Moved to this property with my parents at age 7; A
6 tornado in 1990, moved our house from the foundation, we rebuilt full new
7 basement, rebuilt house, and enlarged home. I'm still living in that home and I am
8 alone since Irene's death. This land is very important to me, it is not my livelihood
9 but it also hold sentimental value and memories of my parents and our marriage.

10 **Q: Do you earn any income from this land?**

11 A: Yes.

12 **Q: Have you depended on the income from your land to support your livelihood**
13 **or the livelihood of your family?**

14 A: Yes.

15 **Q: Have you ever in the past or have you thought about in the future leasing all**
16 **or a portion of your land in question here?**

17 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
18 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
19 all the restrictions and risks and potential negative impacts to farming or ranching
20 operations as opposed to land that did not have those same risks. If I was looking
21 to lease or rent ground I would pay more for comparable non-pipeline land than I
22 would for comparable pipeline land and I think most folks would think the same
23 way. This is another negative economic impact that affects the landowner and the
24 county and the state and will forever and ever should TransCanada's preferred or
25 mainline alternative routes be approved. If they were to twin or closely parallel to
26 Keystone I the vast majority of landowners would be those that already have a
27 pipeline so there would be considerable less new incremental negative impacts.

28 **Q: Do you have similar concerns about selling the land?**

1 A: Well I hope not to have to sell the land in my lifetime but times change and you
2 never know what is around the corner and yes I am concerned that if another piece
3 of ground similar to mine were for sale and it did not have the pipeline and mine
4 did that I would have a lower selling price. I think this would be true for pipeline
5 ground on both the preferred and mainline alternative routes.

6 Q: What is your intent with your land after you die?

7 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
8 to come but I have thought about getting out if this pipeline were to come through.

9 Q: Are you aware that the preferred route of TransCanada's Keystone XL
10 Pipeline would cross the land described above and owned by you?

11 A: Yes.

12 Q: Were you or an entity for which you are a member, shareholder, or director
13 previously sued by TransCanada Keystone Pipeline, LP?

14 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
15 petition for condemnation against our land so it could place its proposed pipeline
16 within an easement that it wanted to take from us on our land.

17 Q: Did you defend yourself and your land in that condemnation action?

18 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
19 and expenses in our resistance of TransCanada's lawsuit against us.

20 Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
21 incurred?

22 A: No, they have not.

23 Q: In its lawsuit against you, did TransCanada identify the amount of your
24 property that it wanted to take for its proposed pipeline?

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 Q: Did TransCanada define what they meant by "property that is reasonably
29 necessary"?

1 A: No, they did not.

2 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
3 property portion of your land?

4 A: Yes, they did.

5 Q: Did TransCanada describe what rights it proposed to take related to the
6 eminent domain property on your land?

7 A: Yes, they did.

8 Q: What rights that they proposed to take did they describe?

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 Q: Prior to filing an eminent domain lawsuit to take your land that
18 TransCanada identified, do you believe they attempted to negotiate in good
19 faith with you?

20 A: No, I do not.

21 Q: Did TransCanada at any time approach you with or deliver to you their
22 proposed easement and right-of-way agreement?

23 A: Yes, they did.

24 Q: At the time you reviewed TransCanada’s easement and right-of-way
25 agreement, did you understand that they would be purchasing a fee title
26 interest in your property or that they were taking something else?

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q:** Is the document included with your testimony here as Attachment No. 3, a
4 true and accurate copy of TransCanada's proposed Easement and Right-of-
5 Way agreement that they included with their condemnation lawsuit against
6 you?

7 **A:** Yes, it is.

8 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
9 and Right-of-Way agreement?

10 **A:** Yes, I have.

11 **Q:** What is your understanding of the significance of the Easement and Right-of-
12 Way agreement as proposed by TransCanada?

13 **A:** My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
19 agreement do you have any concerns about any portions of it or any of the
20 language either included in the document or missing from the proposed
21 document?

22 **A:** Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q:** I would like you to walk the Commissioners through each and every one of
27 your concerns about TransCanada's proposed Easement and Right-of-Way
28 agreement so they can develop an understanding of how that language and
29 the terms of that contract, in your opinion, potentially negatively impacts you

1 and your land. So, if you can start at the beginning of that document and
2 let's work our way through it, okay?

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 Q: Okay, let's start with your first concern please.

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 Q: Explain to the Commissioners why that is a problem.

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. If I was to lease ground from
16 my neighbor I would typically pay twice a year every year as long as they granted
17 me the rights to use their land. That only makes sense – that is fair. If I was going
18 to rent a house in town I would typically pay monthly, every month until I gave up
19 my right to use that house. By TransCanada getting out on the cheap and paying
20 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
21 revenue collection on the money I would be paid and then pay taxes on and
22 contribute to this state and this country. It is money I would be putting back into
23 my local community both spending and stimulating the local economy and
24 generating more economic activity right here. Instead TransCanada's shareholders
25 keep all that money and it never finds its way to Nebraska.

26 Q: What is your next concern?

27 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
28 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
29 limited partnership..." and I have no idea who that really is. I have no idea who is

1 forcing this pipeline on us or who the owners of the entities are, or what are the
2 assets backing this limited partnership, or who the general partner is, or who all
3 the limited partners are, and who makes up the ownership of the these partners or
4 the structure or any of the basic things you would want to know and understand if
5 you would want to do business with such an outfit. According to TransCanada's
6 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
7 liability company called TransCanada Keystone Pipeline GP, LLC is the general
8 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
9 basically nothing. That is really scary since the general partner has the liability but
10 virtually none of the ownership and who knows if it has any other assets.

11 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
12 **percent clear on exactly who could become the owner of about 275 miles of**
13 **Nebraska land?**

14 **A:** No.

15 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
16 **percent clear on exactly who will be operating and responsible for**
17 **approximately 275 miles of tar sands pipeline underneath and through**
18 **Nebraska land?**

19 **A:** No.

20 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
21 **and the State of Nebraska of TransCanada's easement terms.**

22 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
23 called "Grantee")..." and this concerns me because it would allow their easement
24 to be transferred or sold to someone or some company or country or who knows
25 what that I don't know and who we may not want to do business with. This
26 pipeline would be a huge asset for TransCanada and if they can sell to the highest
27 bidder that could have terrible impacts upon all of Nebraska depending upon who
28 may buy it and I don't know of any safeguards in place for us or the State to veto

1 or have any say so in who may own, operate, or be responsible for this pipeline in
2 the future.

3 **Q: Do you think that type of uncertainty and lack of control over a major piece**
4 **of infrastructure crossing our State is in the public interest?**

5 **A:** No, certainly not, in fact, just the opposite.

6 **Q: What's next?**

7 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
8 really concerns me. Why does the easement and right-of-way have to be perpetual
9 and permanent? That is the question myself and my family want an answer to.
10 Perpetual to me is like forever and that doesn't make sense.

11 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

12 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
13 data proving there is a perpetual supply of tar sands. I am not aware in
14 TransCanada's application where it proves there is a perpetual necessity for this
15 pipeline. My understanding of energy infrastructure like wind towers is they have
16 a decommission plan and actually take the towers down when they become
17 obsolete or no longer needed. Nothing manmade lasts forever. My land however
18 will, and I want my family or future Nebraska families to have that land as
19 undisturbed as possible and it is not in my interest or the public interest of
20 Nebraska to be forced to give up perpetual and permanent rights in the land for
21 this specific kind of pipeline project.

22 **Q: Okay, what is your next concern?**

23 **A:** The easement language includes all these things TransCanada can do and it says
24 "...abandoning in place..." so they can just leave this pipeline under my ground
25 until the end of time just sitting there while they are not using it, but I am still
26 prevented from doing on my land and using my land what I would like. If I owned
27 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
28 there. It doesn't make sense and it scares me and it is not in my interest or the
29 public interest of Nebraska to allow this.

Q: Now it looks like we are ready to go to the second page of the Easement is that right?

A: Yes.

Q: So now on the second page of the Easement what are your concerns?

A: Here the Easement identifies a 24-month deadline to complete construction of the pipeline but has caveats that are undefined and ambiguous. The 24-month period starts to run from the moment “actual pipeline installation activities” begin on Landowners property. It appears that TransCanada would define this phrase as needed. It would be wise to explain what types of TransCanada action constitutes “installation activity” For instance, would the placement and storage of an excavator or other equipment on or near the Easement property be an activity or would earth have to be moved before the activity requirement is triggered. This vague phrase is likely to lead to future disputes and litigation that is not in the best interest of the welfare of Nebraska and would not protect property interests. The 24-months can also be extended in the case of “force majeure.” My understanding is that force majeure is often used to insulate a party to a contract when events occur that are completely out of their control. In TransCanada’s easement this is expanded to include “without limitation...availability of labor and materials.” Extending this language to labor and materials is problematic because these are two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to

determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada’s exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems

necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

1 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
2 Landowner's land any debris of any kind without any input or power of
3 Landowner to demand an alternative method or location of debris disposal. Such
4 unilateral powers would negatively affect Landowners property are not conducive
5 to the protection of property rights or economic interest.

6 **Q: What is the next concern you have with the Easement language?**

7 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
8 "where rock is encountered" mean and why does TransCanada solely get to
9 determine whether or not this phrase is triggered. This phrase could be used to
10 justify installing the pipeline 24 inches beneath the surface. The ability to use this
11 provision to minimal locate the pipeline at a depth of 24 inches could negatively
12 affect Landowners property are not conducive to the protection of property rights.
13 A shallow pipeline is much more likely to become a danger and liability in the
14 future given farming operations and buried irrigation lines and other factors
15 common to the current typical agricultural uses of the land in question impacted
16 by TransCanada's preferred pipeline route.

17 **Q: What is the next concern you have with the Easement language?**

18 A: There are more vague concepts solely at the determination of TransCanada such as
19 "as nearly as practicable" and "pre-construction position" and "extent reasonably
20 possible." There is nothing here that defines this or provides a mechanism for
21 documenting or memorializing "pre-construction position" so as to minimize
22 costly legal battles or wasted Landowner time attempting to recreate the soil
23 condition on their fields or pasture. Such unilateral powers would negatively affect
24 Landowners property are not conducive to the protection of property rights or
25 economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: TransCanada maintains the unilateral right to abandon the pipeline and all
28 appurtenances thereto in place on, under, across, or through Nebraska land at any
29 time it chooses. There is no provision for Landowner compensation for such

abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative the their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at any time to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

1 A: There are many terms in the Easement that are either confusing or undefined terms
2 that are without context as to whether or not the Landowner would have any say
3 so in determining what these terms mean or if the evaluation is solely in
4 TransCanada's control. Some of these vague undefined terms are as follows:

- 5 i. "pipeline installation activities"
- 6 ii. "availability of labor and materials"
- 7 iii. "commercially reasonable costs and expenses"
- 8 iv. "reasonably anticipated and foreseeable costs and expenses"
- 9 v. "yield loss damages"
- 10 vi. "diminution in the value of the property"
- 11 vii. "substantially same condition"
- 12 viii. "an actual or potential hazard"
- 13 ix. "efficient"
- 14 x. "convenient"
- 15 xi. "endangered"
- 16 xii. "obstructed"
- 17 xiii. "injured"
- 18 xiv. "interfered with"
- 19 xv. "impaired"
- 20 xvi. "suitable crossings"
- 21 xvii. "where rock is encountered"
- 22 xviii. "as nearly as practicable"
- 23 xix. "pre-construction position"
- 24 xx. "pre-construction grade"
- 25 xxi. "various engineering factors"

26 Each one of these above terms and phrases as read in the context of the Easement
27 could be problematic in many ways. Notably, undefined terms tend to only get
28 definition in further legal proceedings after a dispute arises and the way the
29 Easement is drafted, TransCanada has sole power to determine when and if a

1 particular situation conforms with or triggers rights affected by these terms. For
2 instance, "yield loss damages" should be specifically defined and spelled out
3 exactly how the landowner is to be compensated and in what events on the front
4 end. I can't afford to fight over this after the damage has occurred. Unfortunately,
5 the Landowner is without contractual rights to define these terms or determine
6 when rights related to them trigger and what the affects may be.

7 **Q: Do you have any other concerns about the Easement language that you can**
8 **think of at this time?**

9 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
10 my live testimony in August.

11 **Q: Based upon what you have shared with the Commission above regarding**
12 **TransCanada's proposed Easement terms and agreement, do you believe**
13 **those to be reasonable or just, under the circumstances of the pipeline's**
14 **impact upon you and your land?**

15 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
16 discussed previously.

17 **Q: Did TransCanada ever offer you financial compensation for the rights that**
18 **they sought to obtain in your land, and for what they sought to prevent you**
19 **and any future land owner of your property from doing in the future?**

20 **A:** Yes, we received an offer from them.

21 **Q: As the owner of the land in question and as the person who knows it better**
22 **than anyone else, do you believe that TransCanada offered you just, or fair,**
23 **compensation for all of what they proposed to take from you so that their tar**
24 **sands pipeline could be located across your property?**

25 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
26 offer for all the potential impacts and effects and the rights that I'm giving up, and
27 what we will be prevented from doing in the future and how their pipeline would
28 impact my property for ever and ever.

1 **Q:** Has TransCanada at any time offered to compensate you annually, such as
2 wind farm projects do, for the existence of their potential tar sands pipeline
3 across your property.

4 **A:** No, never.

5 **Q:** At any time did TransCanada present you with or request that you, as the
6 owner of the land in question, sign and execute a document called, "Advanced
7 Release of Damage Claims and Indemnity Agreement?"

8 **A:** Yes, they did and it was included in the County Court lawsuit against us.

9 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
10 "Advanced Release of Damage Claims and Indemnity Agreement?"

11 **A:** Yes, it is.

12 **Q:** What was your understanding of that document?

13 **A:** When I read that document in the plain language of that document, it was my
14 understanding that TransCanada was attempting to pay me a very small amount at
15 that time in order for me to agree to give up my rights to be compensated from
16 them in the future related to any damage or impact they may have upon my
17 property "arising out of, in connection with, or alleged to resulted from
18 construction or surveying over, under or on" my land.

19 **Q:** Did you ever sign that document?

20 **A:** No, I did not.

21 **Q:** Why not?

22 **A:** Because I do not believe that it is fair or just to try to get me to agree to a small
23 sum of money when I have no idea how bad the impacts or damages that they, or
24 their contractors, or subcontractors, or other agents or employees, may cause on
25 my land at any time in the future that resulted from the construction or surveying
26 or their activities upon my land.

27 **Q:** When you reviewed this document, what did it make you feel?

28 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
29 shield themselves against known and foreseeable impacts that their pipeline, and

1 the construction of it, would have upon my land. It made me feel that they knew it
2 was in their financial interest to pay me as little as possible to prevent me from
3 ever having the opportunity to seek fair compensation again, and that this must be
4 based upon their experience of unhappy landowners and situations in other places
5 where they have built pipelines.

6 **Q:** Has TransCanada ever contacted you and specifically asked you if you
7 thought their proposed location of their proposed pipeline across your land
8 was in your best interest?

9 **A:** No, they have not.

10 **Q:** Has TransCanada ever contacted you and specifically asked you if you
11 thought their proposed location of their proposed pipeline across your land
12 was in the public interest of the State of Nebraska?

13 **A:** No, they have not.

14 **Q:** Are you familiar with the Fifth Amendment to the U.S. Constitution and the
15 Takings Clause?

16 **A:** Yes, I am.

17 **Q:** What is your understanding of the Fifth Amendment as it relates to taking of
18 an American citizens property?

19 **A:** My understanding is that, according to the United States Constitution, that if the
20 government is going to take land for public use, then in that case, or by taking for
21 public use, it can only occur if the private land owner is compensated justly, or
22 fairly.

23 **Q:** Has TransCanada ever contacted you specially to explain the way in which
24 the public could use its proposed Keystone XL Pipeline?

25 **A:** No, they have not.

26 **Q:** Can you think of any way in which the public, that is the citizens of the State
27 of Nebraska, can directly use the proposed TransCanada Keystone XL
28 Pipeline, as it dissects the State of Nebraska?

1 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
2 public benefits from this pipeline in any way, how they can use it any way, or how
3 it's in the public interest in any way. By looking at the map, it is quite clear to me
4 that the only reason it's proposed to come through Nebraska, is that because we
5 are geographically in the way from between where the privately-owned Tar Sands
6 are located to where TransCanada wants to ship the Tar Sands to refineries in
7 Houston, Texas.

8 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
9 crude petroleum, or oil and petroleum by-products that you would like to
10 ship in its pipeline?

11 **A:** No, it has not.

12 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
13 products that you, at this time or any time in the future, would desire to place
14 for transport within the proposed TransCanada Keystone XL Pipeline?

15 **A:** No, I do not.

16 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
17 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
18 products within the proposed TransCanada Keystone XL Pipeline?

19 **A:** No, I do not. I've never heard of such a person or company like that.

20 **Q:** Do you pay property taxes for the land that would be affected and impacted
21 at the proposed TransCanada Keystone XL Pipeline?

22 **A:** Yes, I do.

23 **Q:** Why do you pay property taxes on that land?

24 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
25 of that property.

26 **Q:** Because you follow the law and pay property taxes, do you believe you
27 deserve any special consideration or treatment apart from any other person
28 or company that pays property taxes?

1 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
2 just what you do.

3 Q: Do you believe the fact that you pay property taxes entitles you to special
4 treatment of any kind, or special rights of any kind?

5 A: No, of course not.

6 Q: Do you believe the fact that you pay property taxes on your land would be
7 enough to qualify you to have the power of eminent domain to take land of
8 your neighbors or other people in your county, or other people across the
9 state of Nebraska?

10 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
11 I expect an award for or any type of special consideration.

12 Q: Have you at any time ever employed any person other than yourself?

13 A: Well, yes I have.

14 Q: Do you believe that the fact that you have, at some point in your life,
15 employed one or more other persons entitle you to any special treatment or
16 consideration above and beyond any other Nebraskan that has also employed
17 one or more persons?

18 A: No, of course not.

19 Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer
20 have at one point employed another person within this state, entitles you to
21 preferential treatment or consideration of any kind?

22 A: No, of course not. If I choose to employ someone that decision is up to me. I
23 don't deserve any special treatment or consideration for that fact.

24 Q: Do you have any concerns TransCanada's fitness as an applicant for a major
25 crude oil pipeline in its preferred location, or ultimate location across the
26 state of Nebraska?

27 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
28 or even bullied around and being made to feel scared that they did not have any
29 options but to sign whatever papers TransCanada told them they had to. I am

1 aware of folks being threatened that their land would be taken if they didn't follow
2 what TransCanada was saying. I am aware of tactics to get people to sign
3 easements that I don't believe have any place in Nebraska or anywhere such as
4 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
5 landowners and convince them they should sign TransCanada's easement
6 agreements. I am aware of older folks and widows or widowers feeling they had
7 no choice but to sign TransCanada's Easement and they didn't know they could
8 fight or stand up for themselves. From a more practical standpoint, I am worried
9 that according to their answer to our Interrogatory No. 211, TransCanada only
10 owns and operates one (1) major oil pipeline. They simply do not have the
11 experience with this type of pipeline and that scares me. There are others but that
12 is what I can recollect at this time and if I remember more or my recollection is
13 refreshed I will share those with the Commissioners at the Hearing in August.

14 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
15 **landowner is reasonable or just?**

16 **A:** No, I do not.

17 **Q: Do you have any concern about limitations that the construction of this**
18 **proposed pipeline across your affected land would prevent construction of**
19 **future structures upon the portion of your land affected by the proposed**
20 **easement and immediately surrounding areas?**

21 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
22 structures directly across or touching the easement, and it would be unwise and I
23 would be uncomfortable to build anything near the easement for fear of being
24 blamed in the future should any damage or difficulty result on my property in
25 regards to the pipeline.

26 **Q: Do you think such a restriction would impact you economically?**

27 **A:** Well yes, of course.

28 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
26 construction and/or maintenance and operation. I am concerned about spills and
27 leaks that TransCanada has had in the past and will have in the future. This could
28 be catastrophic to my operations or others and to my county and the State.

1 **Q: Do you have any thoughts regarding if there would be an impact upon the**
2 **natural resources on or near your property due to the proposed pipeline?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
5 resources of my land, and the lands near and surrounding the proposed pipeline
6 route.

7 **Q: Do you have any worries about potential impacts from the proposed pipeline**
8 **to the soil of your land, or land near you?**

9 A: Yes, I believe that any construction, operation, and/or maintenance of the
10 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
11 land, as well as land along and surrounding the proposed pipeline route. This
12 includes, but is not limited to, the reasons that we discussed above of disturbing
13 the soil composition and makeup as it has naturally existed for thousands and
14 millions of years during the construction process, and any future maintenance or
15 removal process. I'm gravely concerned about the fertility and the loss of
16 economic ability of my property to grow the crops, or grow the grasses, or grow
17 whatever it is at that time they exist on my property or that I may want to grow in
18 the future, or that a future owner may want to grow. The land will never be the
19 same from as it exists now undisturbed to after it is trenched up for the proposed
20 pipeline.

21 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
22 **upon the groundwater over your land, or surrounding lands?**

23 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
24 the proposed Keystone XL Pipeline would have a detrimental impact upon the
25 groundwater of not only under my land, but also near and surrounding the pipeline
26 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
27 simple and it is simply too valuable to our State and the country to put at
28 unreasonable risk.

1 **Q: Do you have any concern about the potential impact of the proposed pipeline**
2 **upon the surface water on, or near or around your land?**

3 A: Yes, I have significant concerns that any construction, operation, and/or
4 maintenance of the proposed Keystone XL Pipeline would have detrimental
5 impact upon the surface water of not only within my property boundary, but along
6 and near and surrounding the pipeline route, and in fact, across the state of
7 Nebraska.

8 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
9 **upon the wildlife and plants, other than your growing crops on or near your**
10 **land?**

11 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
12 the proposed Keystone XL Pipeline would have a detrimental impact upon the
13 wildlife and the plants, not only that are located on or can be found upon my land,
14 but also near and along the proposed pipeline route.

15 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
16 **fair market value of your land?**

17 A: Yes, I do. I am significantly concerned about how the existence of the proposed
18 pipeline underneath and across and through my property will negatively affect the
19 fair market value at any point in the future, especially at that point in which I
20 would need to sell the property, or someone in my family would need to sell the
21 property. I do not believe, and certainly would not be willing to pay, the same
22 price for land that had the pipeline located on it, versus land that did not. I hope
23 there is never a point where I'm in a position where I have to sell and have to
24 realize as much value as I can out of my land. But because it is my single largest
25 asset, I'm gravely concerned that the existence of the proposed Keystone XL
26 Pipeline upon my land will affect a buyer's willingness to pay as much as they
27 would've paid and as much as I could've received, if the pipeline were not upon
28 my property. There are just too many risks, unknowns, impacts and uncertainties,
29 not to mention all of the rights you give up by the nature of having the pipeline

1 due to having the easement that we have previously discussed, for any reasonable
2 person to think that the existence of the pipeline would not negatively affect my
3 property's value.

4 Q: Have you ever seen the document that's marked as Attachment No. 6, to your
5 testimony?

6 A: Yes, I have.

7 Q: Where have you seen that before?

8 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
9 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
10 believe the portion of the alternative route in Nebraska essentially twins or
11 parallels Keystone I.

12 Q: Do you believe the portion of the proposed pipeline within Nebraska as found
13 in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

14 A: No, I do not.

15 Q: Do you believe that TransCanada's preferred route as found on page 5 of its
16 Application, and as found on Attachment No. 7, here to your testimony, is in
17 the public interest of Nebraska?

18 A: No, I do not.

19 Q: Do you believe that the Keystone mainline alternative route as shown on
20 Attachment No. 7 included with your testimony here is a major oil pipeline
21 route that is in the public interest of Nebraska?

22 A: No, I do not.

23 Q: Do you believe there is any potential route for the proposed Keystone XL
24 Pipeline across, within, under, or through the State of Nebraska that is in the
25 public interest of the citizens of Nebraska?

26 A: No, I do not.

27 Q: Why do you hold that belief?

28 A: Because there simply is no public interest based on all of the factors that I am
29 aware and that I have read and that I have studied that this Commission is to

1 consider that would establish that a for-profit foreign-owned pipeline that simply
2 crosses Nebraska because we are geographically in the way between where tar
3 sands are in Canada to where it wants to ship it to in Texas could ever be in the
4 public interest of Nebraskans. We derive no benefit from this project. It is not for
5 public use. Nebraska is simply in the way and when all considerations are taken in
6 there is no net benefit of any kind for Nebraska should this project be placed in our
7 state. Even if there was some arguable “benefit” it is not enough to outweigh all
8 the negative impacts and concerns.

9 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
10 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
11 **of Nebraska because it may bring temporary jobs during the construction**
12 **phase to Nebraska?**

13 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
14 temporary or on a permanent basis, don’t come with a project that has all the
15 potential and foreseeable negative impacts, many of which we have discussed here
16 and other witnesses throughout the course of this hearing have and will discuss. If
17 I decide to hire and employ someone to help me out in my farming or ranching
18 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
19 to my land or my town or my county or my state. And I’ve hired someone who is
20 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
21 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
22 jobs are not created equal. Additionally, I understand from what I’m familiar with
23 from TransCanada’s own statements that the jobs numbers they originally touted
24 were determined to be a minute fraction of the permanent jobs that had been
25 projected. According to their answer to our Interrogatory No. 191, TransCanada
26 has created only thirty-four (34) jobs within Nebraska working specifically on
27 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
28 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
29 Further, according to their answer to Interrogatory No. 199, TransCanada would

1 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
2 constructed on its Preferred Route or its Mainline Alternative Route.

3 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
4 **because it would cross your land?**

5 A: No, absolutely not. I am opposed to this project because it is not in the public
6 interest, neither within my community nor within our state.

7 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
8 **was to cross someone else's land?**

9 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
10 the fear and anxiety and potential foreseeable risks and negative impacts that this
11 type of a project carrying this type of product brings foisted upon anyone in this
12 state or any other state.

13 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
14 **Pipeline to cross the state of Nebraska?**

15 A: I don't believe there is an intelligent route because as I have stated I don't believe
16 this project anywhere within Nebraska is within the public interest. However, if
17 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
18 had to go somewhere in the state of Nebraska, the only intelligent route I believe
19 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: What do you rely upon to make that statement?**

23 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
24 already exists in that area is reason enough as it is not in our best interest or the
25 public interests to have more major oil pipelines crisscrossing our state. Second,
26 they have all the infrastructure already there in terms of relationships with the
27 counties and local officials and first responders along that route. Third, they have
28 already obtained easements from all the landowners along that route and have
29 relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
2 Aquifer. Sixth, they have already studied that route and previously offered it as an
3 alternative. Seventh, it just makes the most sense that as a state we would have
4 some intelligent policy of energy corridors and co-locating this type of
5 infrastructure near each other.

6 **Q: Do you have any other concerns you would like to reiterate or can think of at**
7 **this time you would like the Commissioners to understand?**

8 A: Yes. TransCanada refuses to agree to remove this pipeline after its usefulness has
9 expired. They will be leaving a continuous toxic waste dump across Nebraska.
10 The pipe will be significantly deteriorated by then. In other words, this is a disaster
11 waiting to happen. Property rights ensure that private corporations cannot take
12 land via eminent domain unless it is in the public interest. There is no public
13 benefit from this pipeline to the citizens of Nebraska. This is a situation of
14 granting a foreign corporation the right to take land from American citizens. The
15 whole purpose is for corporate gain and greed. TransCanada wants to use eminent
16 domain as a means of "hostile business acquisition." That is not in the public
17 interest. The non-negotiable terms of TransCanada's easement violate good
18 business practices. They provide a one-time payment for a lifetime of risks. The
19 easement takes control of a portion of land down the middle of the farm. It is not
20 like a road or highway where the land is generally at the edge of the property. By
21 putting it through the middle of a property, the landowner provides more security
22 from vandalism or terrorism. The farmer also deals with all the reclamation and
23 productivity issues. In the cases of most spills, it has been a landowner or tenant
24 who has discovered leaks. The company knows that the farmers will be over the
25 easement on a regular basis to observe potential problems. For all the risks and
26 extra work, annual payments should be made to the landowner. Wind energy
27 easements make annual payments to the landowner. No wise businessman would
28 sign TransCanada's easement that offers a lot of risk and no reward. If anything
29 TransCanada should offer a lease not a one-time payment.

1 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
2 **like the Public Service Commissioners to consider in their review of**
3 **TransCanada's Application?**

4 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
5 document below but other things may come to me or my memory may be
6 refreshed and I will add and address those things at the time of the Hearing in
7 August and address any additional items at that time as is necessary. Additionally,
8 I have not had an adequate amount of time to receive and review all of
9 TransCanada's answers to our discovery and the discovery of others so it was
10 impossible to competently and completely react to that in my testimony here and I
11 reserve the right to also address anything related to discovery that has not yet
12 concluded as of the date I signed this document below. Lastly, certain documents
13 requested have not yet been produced by TransCanada and therefore I may have
14 additional thoughts on those I will also share at the hearing as needed.

15 **Q: What is it that you are requesting the Public Service Commissioners do in**
16 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
17 **across Nebraska?**

18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
19 a temporary job spike that this project may bring to a few counties and beyond the
20 relatively small amount of taxes this proposed foreign pipeline would possibly
21 generate. And, instead think about the perpetual and forever impacts of this
22 pipeline as it would have on the landowners specifically, first and foremost, but
23 also thereby upon the entire state of Nebraska, and to determine that neither the
24 preferred route nor the Keystone mainline alternative route are in the public
25 interest of the citizens of the state of Nebraska. And if the Commissioners were
26 inclined to modify TransCanada's proposed routes and were to be inclined to grant
27 an application for a route in Nebraska, that the only potential route that would
28 make any intelligent sense whatsoever would be twinning or near paralleling of
29 the proposed KXL with the existing Keystone I pipeline. It simply does not make

1 sense to add yet another major oil pipeline crisscrossing our state creating new
2 pumping stations, creating new impacts on additional counties and communities
3 and going through all of the court processes with myself and other landowners like
4 me when this applicant already has relationships with the landowners, the towns
5 and the communities along Keystone I, and that Keystone I is firmly outside of the
6 sand hills and a significantly further portion away from the heart of the Ogallala
7 Aquifer than the preferred route or the Keystone mainline alternative route.

8 **Q: Does Attachment No. 8 here contain other documents you are competent to**
9 **speak about that you wish to be part of your testimony and to discuss in more**
10 **detail as needed at the August 2017 Hearing?**

11 A: Yes.

12 **Q: Are all of your statements in your testimony provided above true and**
13 **accurate as of the date you signed this document to the best of your**
14 **knowledge?**

15 A: Yes, they are.

16 **Q: Thank you, I have no further questions at this time and reserve the right to**
17 **ask you additional questions at the August 2017 Hearing.**

State of Nebraska
County Of Holt

The foregoing instrument was acknowledged before me on the 25th day of May, 2017.

by Larry D Cleary

Larry D Cleary
Larry D Cleary

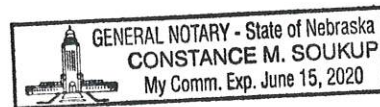
Subscribed and Sworn to me before this 25th day of May, 2017.

Constance M Soukup
Notary Public

Notary Public of the State of Nebraska

Residing at O'Neill, NE

My commission expires 6-15-2020



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Jeanne Crumly in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Jeanne Crumly.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: My husband Ron and I farm and ranch in rural Holt County.

EXHIBIT

17

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1 **Q:** If you are you married tell us your spouse's name please?

2 A: Ron.

3 **Q:** Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
4 and or your family?

5 A. Yes.

6 **Q:** For the land that would be affected and impacted by the proposed KXL tar
7 sands pipeline give the Commissioners a sense how long the land has been in
8 your family and a little history of the land.

9 A: My husband Ron and I farm and ranch in Holt County on land that the proposed
10 route would dissect. While I am only a 25 year resident of this land, Ron
11 represents the 4th generation and is working with and training the 5th and 6th
12 generations to love and work and steward this land. *In fact, his mother's*
13 *grandfather, Nicholas Grass, selected his homestead spot specifically because of a*
14 *pond that holds clear water year-round. That pond still waters our cattle. Our*
15 *land value is directly proportional to availability of clean water. Over 100 years*
16 *of successful management of Holt County sand makes Ron a specialist is what*
17 *works and what does not on this sandy, fragile soil. This knowledge and*
18 *experience as well as years of interaction with TransCanada and its endless*
19 *draggle of representatives* has convinced us that this project is inconvenient,
20 unwise, and unnecessary. We request the Commission deny this route.

21 **Q:** Do you earn any income from this land?

22 A: Yes.

23 **Q:** Have you depended on the income from your land to support your livelihood
24 or the livelihood of your family?

25 A: Yes.

26 **Q:** Have you ever in the past or have you thought about in the future leasing all
27 or a portion of your land in question here?

28 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
29 tenant may try to negotiate a lower price for my land if it had the pipeline on it and

1 all the restrictions and risks and potential negative impacts to farming or ranching
2 operations as opposed to land that did not have those same risks. If I was looking
3 to lease or rent ground I would pay more for comparable non-pipeline land than I
4 would for comparable pipeline land, and I think most folks would think the same
5 way. This is another negative economic impact that affects the landowner and the
6 county and the state and will forever and ever should TransCanada's preferred or
7 mainline alternative routes be approved. If they were to twin or closely parallel to
8 Keystone I, the vast majority of landowners would be those that already have a
9 pipeline so there would be considerable less new incremental negative impacts.

10 **Q: Do you have similar concerns about selling the land?**

11 A: Well, I hope not to have to sell the land in my lifetime but times change and you
12 never know what is around the corner, and yes, I am concerned that if another
13 piece of ground similar to mine were for sale and it did not have the pipeline and
14 mine did that I would have a lower selling price. I think this would be true for
15 pipeline ground on both the preferred and mainline alternative routes.

16 **Q: What is your intent with your land after you die?**

17 A: Like I said, I hope not to have to sell and I hope that it stays in the family for years
18 to come, but I have thought about getting out if this pipeline were to come
19 through.

20 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
21 Pipeline would cross the land described above and owned by you?**

22 A: Yes.

23 **Q: Are you aware that TransCanada claims its proposed preferred KXL route is
24 not in the Sandhills?**

25 A: Yes.

26 **Q: What do you think about that?**

27 A: *There are maps that refute this claim and suggest that we are in the Sandhills, but
28 that is another argument. What is undisputable is that we share much of the
29 vulnerability of what is classic sandhills, namely highly sandy and highly*

1 *permeable soil. That makes this ground particularly challenging to farm.* Today's
2 farming practice represents 100+ years of learning how to manage a uniquely
3 fragile ecosystem: exceedingly sandy soil, harsh and unpredictable weather
4 including erratic rain and harsh winds, as well as dramatic extremes in
5 temperature. These very challenges along with the asset of subsurface moisture
6 are what made Holt County the epicenter of experimentation with irrigation
7 systems in the early 1960s. But as we have learned, innovation never comes
8 without cost. While irrigation, particularly center-pivot irrigation, was a game
9 changer for agriculture in our area, failure to appreciate the risk on highly
10 permeable soil resulted in a dangerous nitrate contamination which greatly
11 challenges us today. Dramatic changes in ag practices such as no-till farming,
12 changed application practices, and modifications of the terrain, such as buffer
13 strips along waterways are making headway but many homes, ours included, are
14 condemned to use filtered or bottled water because well water is too compromised.
15 This is the situation that brings me here today. Loud and public proclamations
16 asserted that the current proposed route was 'safe' because it was moved 'off the
17 Sandhills'. I am here to challenge that claim. The maps used to mark that original
18 line included our farm which was designated Sandhills. The very month that
19 move was made and the governor claim to have moved the line off the Sandhills,
20 that same DEQ site had posted a different map with a changed designation as to
21 the boundaries of the Sandhills. Whether our land is designated Sandhills or not is
22 not the point, however. Much of what makes the Sandhills a poor location for this
23 pipe exists despite this designation. Our soil has been tested and shown to be over
24 80% sand. This creates a permeability that makes subsurface water contamination
25 particularly risky. The nitrate contamination is proof of that vulnerability. That,
26 combined with a relatively high water-table, about 40 feet on average but as
27 shallow as 10 feet across much of the proposed line, makes contamination
28 unavoidable in the event of a spill. In the case of nitrate contamination, while not
29 healthy, work arounds exist. In contrast, there is no work around in the event of a

1 pipeline leak. With the proposed route running less than 400 yards from our house.
2 Our irrigation well is within 200 yards of that route. Contamination of that or our
3 domestic well would not be reversible. That same risk exists across this proposed
4 route. *Consider that by their own admission, the system can not detect a leak*
5 *smaller than 2%. How long would it take to detect a leak in the Missouri River, or*
6 *the Niobrara, or the Platte. How long would it be before a “localized leak”*
7 *became a catastrophe for our state?*

8 **Q: Were you or an entity for which you are a member, shareholder, or director**
9 **previously sued by TransCanada Keystone Pipeline, LP?**

10 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
11 petition for condemnation against our land so it could place its proposed pipeline
12 within an easement that it wanted to take from us on our land.

13 **Q: Did you defend yourself and your land in that condemnation action?**

14 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
15 and expenses in our resistance of TransCanada’s lawsuit against us.

16 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
17 **incurred?**

18 A: No, they have not. In fact, in court in Holt County, Judge Allen Brodbeck asked
19 the TransCanada lawyers what they thought should happen to the landowners who
20 had spend all this money for legal fees, “So, what, you’re just going to hang the
21 landowners out to dry?” TransCanada had no response. That is this wonderful
22 working relationship we have had with this company.

23 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
24 **property that it wanted to take for its proposed pipeline?**

25 A: The lawsuit against us stated they would take the amount of property that is
26 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
27 and equipment reasonably necessary to operate the pipeline.

28 **Q: Did TransCanada define what they meant by “property that is reasonably**
29 **necessary”?**

1 A: No, they did not.

2 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
3 property portion of your land?

4 A: Yes, they did.

5 Q: Did TransCanada describe what rights it proposed to take related to the
6 eminent domain property on your land?

7 A: Yes, they did.

8 Q: What rights that they proposed to take did they describe?

9 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
10 operate, and maintain the pipeline and the plant and equipment reasonably
11 necessary to operate the pipeline, specifically including surveying, laying,
12 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
13 reconstructing, removing and abandoning one pipeline, together with all fittings,
14 cathodic protection equipment, pipeline markers, and all their equipment and
15 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
16 petroleum products, and all by-products thereof.”

17 Q: Prior to filing an eminent domain lawsuit to take your land that
18 TransCanada identified, do you believe they attempted to negotiate in good
19 faith with you?

20 A: No, I do not.

21 Q: Did TransCanada at any time approach you with or deliver to you their
22 proposed easement and right-of-way agreement?

23 A: Yes, they did.

24 Q: At the time you reviewed TransCanada’s easement and right-of-way
25 agreement, did you understand that they would be purchasing a fee title
26 interest in your property or that they were taking something else?

27 A: I understood that they proposed to have the power to take both a temporary
28 construction easement that could last for a certain period of time and then also a
29 permanent easement which they described to be 50 feet across or in width, and

1 that would run the entire portion of my property from where a proposed pipeline
2 would enter my property until where it would exit the property.

3 **Q:** Is the document included with your testimony here as Attachment No. 3, a
4 true and accurate copy of TransCanada's proposed Easement and Right-of-
5 Way agreement that they included with their condemnation lawsuit against
6 you?

7 **A:** Yes, it is.

8 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
9 and Right-of-Way agreement?

10 **A:** Yes, I have.

11 **Q:** What is your understanding of the significance of the Easement and Right-of-
12 Way agreement as proposed by TransCanada?

13 **A:** My understanding is that this is the document that will govern all of the rights and
14 obligations and duties as well as the limitations of what I can and cannot do and
15 how I and any future landowner and any person I invite to come onto my property
16 must behave as well as what TransCanada is and is not responsible for and how
17 they can use my land.

18 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
19 agreement do you have any concerns about any portions of it or any of the
20 language either included in the document or missing from the proposed
21 document?

22 **A:** Yes, I have a number of significant concerns and worries about the document and
23 how the language included and the language not included potentially negatively
24 impacts my land and thereby potentially negatively impacts my community and
25 my state.

26 **Q:** I would like you to walk the Commissioners through each and every one of
27 your concerns about TransCanada's proposed Easement and Right-of-Way
28 agreement so they can develop an understanding of how that language and
29 the terms of that contract, in your opinion, potentially negatively impacts you

1 and your land. So, if you can start at the beginning of that document and
2 let's work our way through it, okay?

3 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
4 Easement and Right-of-Way agreement and how it negatively could affect my
5 property rights and my economic interests.

6 Q: Okay, let's start with your first concern please.

7 A: The very first sentence talks about consideration or how much money they will
8 pay to compensate me for all of the known and unknown affects and all of the
9 rights I am giving up and for all the things they get to do to my land and for what
10 they will prevent me from doing on my land and they only will pay me one time at
11 the signing of the easement agreement. That is a huge problem.

12 Q: Explain to the Commissioners why that is a problem.

13 A: It is not fair to the landowner, the county, or the State. It is not fair to the
14 landowner because they want to have my land forever for use as they see fit so
15 they can make a daily profit from their customers. We engage in various leases
16 with neighbors for land around us. In our rent agreements we typically pay twice a
17 year, every year as long as they grant me the rights to use their land. The wind
18 farm a few miles north of our front door is a project that provides jobs and
19 produces energy independence for our state, pays the landowners annually for the
20 life of the project. That only makes sense – that is fair. If I were going to rent a
21 house in town, I would typically pay monthly, every month until I gave up my
22 right to use that house. By TransCanada getting out on the cheap and paying once
23 in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
24 revenue collection on the money I would be paid and then pay taxes on and
25 contribute to this state and this country. It is money I would be putting back into
26 my local community both spending and stimulating the local economy and
27 generating more economic activity right here. Instead TransCanada's shareholders
28 keep all that money and it never finds its way to Nebraska.

29 Q: What is your next concern?

1 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
2 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
3 limited partnership...” and I have no idea who that really is. I have no idea who is
4 forcing this pipeline on us or who the owners of the entities are, or what are the
5 assets backing this limited partnership, or who the general partner is, or who all
6 the limited partners are, and who makes up the ownership of the these partners or
7 the structure or any of the basic things you would want to know and understand if
8 you would want to do business with such an outfit. According to TransCanada’s
9 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
10 liability company called TransCanada Keystone Pipeline GP, LLC is the general
11 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
12 basically nothing. That is really scary since the general partner has the liability but
13 virtually none of the ownership and who knows if it has any other assets.

14 Q: Do you think it is in the public interest of Nebraska to not be one-hundred
15 percent clear on exactly who could become the owner of over 275 miles of
16 Nebraska land?

17 A: No.

18 Q: Do you think it is in the public interest of Nebraska to not be one-hundred
19 percent clear on exactly who will be operating and responsible for
20 approximately 275 miles of tar sands pipeline underneath and through
21 Nebraska land?

22 A: No.

23 Q: Okay, let’s continue please with your concerns of the impacts upon your land
24 and the State of Nebraska of TransCanada’s easement terms.

25 A: Yes, so the next sentence talks about “...its successors and assigns (hereinafter
26 called “Grantee”)...” and this concerns me because it would allow their easement
27 to be transferred or sold to someone or some company or country or who knows
28 what that I don’t know and who we may not want to do business with. This
29 pipeline would be a huge asset for TransCanada and if they can sell to the highest

bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

A: Then it says "...a perpetual permanent easement and right-of-way..." and this really concerns me. Why does the easement and right-of-way have to be perpetual and permanent? That is the question my family and I want an answer to. Perpetual to me is like forever and that doesn't make sense. That same wind farm just shouting distance from our house offers a 20 year easement. This pipeline project is supposed to be a 50-year project. Why is the easement not aligned with that?

Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?

A: For many reasons but mostly because the tar sands are finite. I am unaware of any data proving there is a perpetual supply of tar sands. I am not aware in TransCanada's application where it proves there is a perpetual necessity for this pipeline. My understanding of energy infrastructure like wind towers is they have a decommission plan and actually take the towers down when they become obsolete or no longer needed. Nothing manmade lasts forever. My land however will, and I want my family or future Nebraska families to have that land as undisturbed as possible and it is not in my interest or the public interest of Nebraska to be forced to give up perpetual and permanent rights in the land for this specific kind of pipeline project.

Q: Okay, what is your next concern?

A: The easement language includes all these things TransCanada can do and it says "...abandoning in place..." so they can just leave this pipeline under my ground until the end of time just sitting there while they are not using it, but I am still

1 prevented from doing on my land and using my land what I would like. If I owned
2 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
3 there. It doesn't make sense and it scares me and it is not in my interest or the
4 public interest of Nebraska to allow this.

5 **Q:** Now it looks like we are ready to go to the second page of the Easement is that
6 right?

7 **A:** Yes.

8 **Q:** So now on the second page of the Easement what are your concerns?

9 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
10 pipeline but has caveats that are undefined and ambiguous. The 24-month period
11 starts to run from the moment "actual pipeline installation activities" begin on
12 Landowners property. It appears that TransCanada would define this phrase as
13 needed. It would be wise to explain what types of TransCanada action constitutes
14 "installation activity" For instance, would the placement and storage of an
15 excavator or other equipment on or near the Easement property be an activity or
16 would earth have to be moved before the activity requirement is triggered. This
17 vague phrase is likely to lead to future disputes and litigation that is not in the best
18 interest of the welfare of Nebraska and would not protect property interests. The
19 24-months can also be extended in the case of "force majeure." My understanding
20 is that force majeure is often used to insulate a party to a contract when events
21 occur that are completely out of their control. In TransCanada's easement this is
22 expanded to include "without limitation...availability of labor and materials."
23 Extending this language to labor and materials is problematic because these are
24 two variables that TransCanada does have some or significant control over and to
25 allow extension of the 24-month period over events not truly out of the control of
26 TransCanada and without further provision for compensation for the Landowner is
27 not conducive to protection of property rights.

28 **Q:** Okay, what is your next concern?

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power that I can’t do anything about as the landowner is
19 in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 Q: Is there any specific event or example you are aware of that makes this
22 concern more real for you?

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as Attachment No. 4.

29 Q: What is your next concern with the Easement language?

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. The landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route. ***note here: Here is where my son-
21 in-law says that industry standard would require that any pipeline must lie below
22 the frost line. Anything higher greatly increases the vulnerability of the pipeline to
23 damage from freeze and thaw? What industry standard are they adhering to if this
24 is acceptable? He says that this is nothing more than going it on the cheap!

25 **Q: What is the next concern you have with the Easement language?**

26 A: There are more vague concepts solely at the determination of TransCanada such as
27 “as nearly as practicable” and “pre-construction position” and “extent reasonably
28 possible.” There is nothing here that defines this or provides a mechanism for
29 documenting or memorializing “pre-construction position” so as to minimize

1 costly legal battles or wasted Landowner time attempting to recreate the soil
2 condition on their fields or pasture. Such unilateral powers would negatively affect
3 Landowners property are not conducive to the protection of property rights or
4 economic interest.

5 **Q: What is the next concern you have with the Easement language?**

6 A: TransCanada maintains the unilateral right to abandon the pipeline and all
7 appurtenances thereto in place on, under, across, or through Nebraska land at any
8 time it chooses. There is no provision for Landowner compensation for such
9 abandonment nor any right for the Landowner to demand removal. Such unilateral
10 powers would negatively affect Landowners property are not conducive to the
11 protection of property rights or economic interest.

12 **Q: What is the next concern you have with the Easement language?**

13 A: TransCanada has the power to unilaterally move or modify the location of any
14 Easement area whether permanent or temporary at their sole discretion.
15 Regardless, if Landowner has taken prior steps relative the their property in
16 preparation or planning of TransCanada's taking of the initial easement area(s),
17 the language here does not require TransCanada to compensate the Landowner if
18 they decide to move the easement anywhere on Landowners property. Such
19 unilateral powers would negatively affect Landowners property are not conducive
20 to the protection of property rights or economic interests.

21 **Q: What is the next concern you have with the Easement language?**

22 A: The Easement requires that all of the burdens and restrictions upon Landowner to
23 transfer and be applicable to any future owner of the Land in question without the
24 ability of the future Landowner to modify or negotiate any of the language in
25 question to which it will be held to comply.

26 **Q: What is the next concern you have with the Easement language?**

27 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
28 Easement to any person, company, country, etc. at their sole discretion at anytime
29 to anyone. This also means that any buyer of the easement could do the same to a

1 third buyer and so on forever. There is no change of control or sale provision in
2 place to protect the Landowner or Nebraska or to provide compensation for such
3 change of control or ownership. It is not conducive to the protection of property
4 rights or economic interests to allow unilateral unrestricted sale of the Easement
5 thereby forcing upon the Landowner and our State a new unknown Easement
6 owner.

7 **Q: What is the next concern you have with the Easement language?**

8 **A:** This project represents an enormous inconvenience to our operation. The
9 proposed route crosses about 400 yards from both our domestic and irrigation
10 well. Any degree of leak within this area runs the risk of contaminating both our
11 drinking and our irrigating water. Like I said earlier, this route transects land that
12 is both highly erodible and highly permeable. A close examination of the route,
13 particularly the portion that has shown the highest level of resistance, reveals
14 Nebraska's highest density of irrigation wells. What this means is that our
15 farming operations are fully reliant on available, dependable water sources for
16 irrigation. Because of the high permeability, in our case at least 80% sand, water
17 quickly, returns to the aquifer. In the early days of the irrigation boom, the risks
18 related to this were neither fully appreciated nor understood. The result was
19 nitrate contamination that is still battled today. Today's operations include a
20 whole host of modifications to remediate and prevent further contamination. In
21 our case, we practice a number of changes in application practices. Furthermore,
22 partnership with state and local agencies assist us in creating such things as buffer
23 strips along waterways to prevent runoff contamination into flowing water. The
24 paradox of our geography is that in a space as small as 5 acres, we can have some
25 crops burn and other crops drown. In some places we have installed tile lines to
26 help equalize water and better manage particularly tricky spots. One of these
27 places is also the proposed route. Tiling land is an extremely expensive
28 undertaking and disruption of that space can compromise the entire project.
29 Furthermore, tile lines occasionally require maintenance. Current easement

language would require permission from the pipeline company to even dig in our own land, impeding our ability to manage our land at will.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: What is the next concern you have with the Easement language?

A: Irrigation is the lifeblood of modern agriculture in our area. TransCanada, in current easement language, claims the right to enter our property at will and to have us shut down our irrigation for its own needs. Anyone who knows hot Nebraska dry winds knows that a day or two with irrigation restriction can make the difference between a profit and a loss for a farmer. In none of our negotiations has TransCanada demonstrated concerns or reliable assurances that they would be a reliable partner.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q:** Did TransCanada ever offer you financial compensation for the rights that
2 they sought to obtain in your land, and for what they sought to prevent you
3 and any future land owner of your property from doing in the future?

4 **A:** Yes, we received offers from them.

5 **Q:** As the owner of the land in question and as the person who knows it better
6 than anyone else, do you believe that TransCanada offered you just, or fair,
7 compensation for all of what they proposed to take from you so that their tar
8 sands pipeline could be located across your property?

9 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and effects and the rights that I'm giving up, and
11 what we will be prevented from doing in the future and how their pipeline would
12 impact my property for ever and ever.

13 **Q:** Has TransCanada at any time offered to compensate you annually, such as
14 wind farm projects do, for the existence of their potential tar sands pipeline
15 across your property.

16 **A:** No, never.

17 **Q:** At any time did TransCanada present you with or request that you, as the
18 owner of the land in question, sign and execute a document called, "Advanced
19 Release of Damage Claims and Indemnity Agreement?"

20 **A:** Yes, they did and it was included in the County Court lawsuit against us.

21 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
22 "Advanced Release of Damage Claims and Indemnity Agreement?"

23 **A:** Yes, it is.

24 **Q:** What was your understanding of that document?

25 **A:** When I read that document in the plain language of that document, it was my
26 understanding that TransCanada was attempting to pay me a very small amount at
27 that time in order for me to agree to give up my rights to be compensated from
28 them in the future related to any damage or impact they may have upon my

1 property "arising out of, in connection with, or alleged to resulted from
2 construction or surveying over, under or on" my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A: Because I do not believe that it is fair or just to try to get me to agree to a small
7 sum of money when I have no idea how bad the impacts or damages that they, or
8 their contractors, or subcontractors, or other agents or employees, may cause on
9 my land at any time in the future that resulted from the construction or surveying
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
13 shield themselves against known and foreseeable impacts that their pipeline, and
14 the construction of it, would have upon my land. It made me feel that they knew it
15 was in their financial interest to pay me as little as possible to prevent me from
16 ever having the opportunity to seek fair compensation again, and that this must be
17 based upon their experience of unhappy landowners and situations in other places
18 where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you**
20 **thought their proposed location of their proposed pipeline across your land**
21 **was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you**
24 **thought their proposed location of their proposed pipeline across your land**
25 **was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
28 **Takings Clause?**

29 A: Yes, I am.

1 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
2 **an American citizens property?**

3 **A:** My understanding is that, according to the United States Constitution, that if the
4 government is going to take land for public use, then in that case, or by taking for
5 public use, it can only occur if the private land owner is compensated justly, or
6 fairly.

7 **Q: Has TransCanada ever contacted you specially to explain the way in which**
8 **the public could use its proposed Keystone XL Pipeline?**

9 **A:** No, they have not.

10 **Q: Can you think of any way in which the public, that is the citizens of the State**
11 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
12 **Pipeline, as it dissects the State of Nebraska?**

13 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
14 public benefits from this pipeline in any way, how they can use it any way, or how
15 it's in the public interest in any way. By looking at the map, it is quite clear to me
16 that the only reason it's proposed to come through Nebraska, is that because we
17 are geographically in the way from between where the privately-owned Tar Sands
18 are located to where TransCanada wants to ship the Tar Sands to refineries in
19 Houston, Texas. No, in fact TransCanada paid a great deal of attention to the
20 concept of eminent domain, but it was never used in the sense of accountability to
21 the public or public interest. Rather, TransCanada used it as a threat, agree with
22 our offer or we will just condemn your land. In fact, in this case, it became a tool
23 to diminish public safety, because TransCanada always implied that they could set
24 the terms that benefitted them and we were a mere obstacle. That is not in our best
25 interest, nor in the interest of the public.

26 **Q: Has TransCanada ever contacted you and asked you if you had any tar sands,**
27 **crude petroleum, or oil and petroleum by-products that you would like to**
28 **ship in its pipeline?**

29 **A:** No, it has not.

1 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
2 products that you, at this time or any time in the future, would desire to place
3 for transport within the proposed TransCanada Keystone XL Pipeline?

4 **A:** No, I do not.

5 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
6 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
7 products within the proposed TransCanada Keystone XL Pipeline?

8 **A:** No, I do not. I've never heard of such a person or company as that.

9 **Q:** Do you pay property taxes for the land that would be affected and impacted
10 at the proposed TransCanada Keystone XL Pipeline?

11 **A:** Yes, I do.

12 **Q:** Why do you pay property taxes on that land?

13 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
14 of that property.

15 **Q:** Because you follow the law and pay property taxes, do you believe you
16 deserve any special consideration or treatment apart from any other person
17 or company that pays property taxes?

18 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
19 just what you do.

20 **Q:** Do you believe the fact that you pay property taxes entitles you to special
21 treatment of any kind, or special rights of any kind?

22 **A:** No, of course not.

23 **Q:** Do you believe the fact that you pay property taxes on your land would be
24 enough to qualify you to have the power of eminent domain to take land of
25 your neighbors or other people in your county, or other people across the
26 state of Nebraska?

27 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
28 I expect an award for or any type of special consideration.

29 **Q:** Have you at any time ever employed any person other than yourself?

1 A: Well, yes I have.

2 Q: Do you believe that the fact that you have, at some point in your life,
3 employed one or more other persons entitle you to any special treatment or
4 consideration above and beyond any other Nebraskan that has also employed
5 one or more persons?

6 A: No, of course not.

7 Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer
8 have at one point employed another person within this state, entitles you to
9 preferential treatment or consideration of any kind?

10 A: No, of course not. If I choose to employ someone that decision is up to me. I
11 don't deserve any special treatment or consideration for that fact.

12 Q: At the beginning of your statement, you briefly described your property that
13 would be impacted by the potential Keystone XL Pipeline. I would like you to
14 give the Commissioners a sense of specifically how you believe the proposed
15 Keystone XL Pipeline and its preferred route, which proposes to go across
16 your land, how it would in your opinion based on your knowledge,
17 experience, and background of your land, affect it.

18 A: On a personal level, this project represents an enormous risk and enormous
19 inconvenience to our operation. As I said before, the proposed route crosses about
20 400 yards from both our domestic and irrigation well. Here is the risk. Any
21 degree of leak within this area runs the risk of contaminating both our drinking
22 and our irrigating water. This route transects land that is both highly erodible and
23 highly permeable. That close examination of the route, particularly the portion
24 that has shown the highest level of resistance, reveals Nebraska's highest density
25 of irrigation wells. What this means is that our farming operations are fully reliant
26 on available, dependable water sources for irrigation. Because of that high
27 permeability, remember that in our case at least 80% sand, water quickly returns to
28 the aquifer. Earliest fertilizer application processes resulted in nitrate
29 contamination that is still battled today. Note also that further east, as along

1 Keystone 1, heavier ground does not contend with these issues. Today, our
2 operation includes modifications to remediate and prevent further contamination.
3 We apply fertilizers differently. Better well monitoring, a moratorium on wells
4 and things like buffer strips along waterways to prevent runoff contamination into
5 flowing water all work together to protect what we recognize as a most vital
6 national resource.

7 There are also operation-threatening inconveniences. On one of our quarters,
8 particularly, we have those tile lines I talked about before. This input alone cost
9 us well over \$100,000 only a few years ago. This spring we had an enormous
10 amount of rain and despite the tile lines, we had spots failing to drain. We
11 contacted our tile man and waited for an opening in his schedule. He called one
12 afternoon and could come within a hour. He arrived, did considerable digging,
13 found roots that were blocking the lines and fixed them. In spring planting, timing
14 is everything. He was able to come and attend to an issue that allowed us to get
15 back in the field before the next rain. Had the pipeline been in place, we would
16 have been compelled to wait for approval from some remote, foreign company to
17 attend to issues on our own land. Current easement language would require
18 permission from the pipeline company to even dig in our own land, impeding our
19 ability to manage our land at will.

20 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
21 **crude oil pipeline in its preferred location, or ultimate location across the**
22 **state of Nebraska?**

23 **A:** Yes, I have significant concerns. I am aware of landowners being treated unfairly
24 or even bullied around and being made to feel scared that they did not have any
25 options but to sign whatever papers TransCanada told them they had to. I am
26 aware of folks being threatened that their land would be taken if they didn't follow
27 what TransCanada was saying. I am aware of tactics to get people to sign
28 easements that I don't believe have any place in Nebraska or anywhere such as
29 TransCanada or some outfit associated with it hiring a pastor or priest to pray with

landowners and convince them they should sign TransCanada's easement agreements. I am aware of older folks and widows or widowers feeling they had no choice but to sign TransCanada's Easement and they didn't know they could fight or stand up for themselves. From a more practical standpoint, I am worried that according to their answer to our Interrogatory No. 211, TransCanada only owns and operates one (1) major oil pipeline. They simply do not have the experience with this type of pipeline and that scares me. There are others but that is what I can recollect at this time and if I remember more or my recollection is refreshed I will share those with the Commissioners at the Hearing in August.

Q: Were you ever at any meetings with TransCanada employees or representatives where you formulated a concern about the kinds of things TransCanada was saying?

A: Yes.

Q: Tell the Commissioners what you recall about that.

A: The firmness of my rejection of this project came during our last meeting with TransCanada. We had respectfully attended every informational meeting offered. Most were held at the Blarney Stone restaurant in O'Neill. One spokesman was usually accompanied by a coterie of company men. Each meeting took a different angle. At various meetings we had been told, "the trouble with these people (landowners) was that they over-thought this issue". We had been told the \$8,900 offer was fair because "it was the going rate for land". On this final meeting, the spokesman came armed with a library of books to convince us that there was nothing in the pipes that was harmful. The material being transported was all naturally occurring elements and presented no risk. My husband Ron, a biology major, explained our situation, a pipe 400 yards from our well and our home. He then asked, "What if there is a leak that gets into our well?" The TC spokesman smiled and said, "Well, you just pump that out on the land and it will naturally break down in the soil. No problem!" This absurdity was the final straw. With us, as with most of us in this lawsuit, this company has squandered its credibility.

1 They will say and do anything to have their way. How could we as a citizen, more
2 importantly as a state, trust anything that this company says or does. How could
3 our state even consider aligning itself with a foreign, for-profit company over the
4 best interests of its own citizens? The point of this is more than talking about a
5 spill or leak. It is to highlight the way TransCanada would treat and talk to
6 landowners and spread information that is clearly untrue and misleading.

7 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
8 **landowner is reasonable or just?**

9 **A:** No, I do not.

10 **Q: Do you have any concern about limitations that the construction of this**
11 **proposed pipeline across your affected land would prevent construction of**
12 **future structures upon the portion of your land affected by the proposed**
13 **easement and immediately surrounding areas?**

14 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
15 structures directly across or touching the easement, and it would be unwise and I
16 would be uncomfortable to build anything near the easement for fear of being
17 blamed in the future should any damage or difficulty result on my property in
18 regards to the pipeline.

19 **Q: Do you think such a restriction would impact you economically?**

20 **A:** Well yes, of course.

21 **Q: How do you think such a restriction would impact you economically?**

22 **A:** The future of this land may not be exactly how it's being used as of this moment,
23 and having the restrictions and limiting my ability to develop my land in certain
24 ways presents a huge negative economic impact on my husband and me, my
25 family, and any potential future owner of the property. You have no idea how we
26 or the future owner may want to use this land in the future or the other land across
27 Nebraska potentially affected by the proposed Keystone XL tar sands pipeline.
28 Fifty years ago it would have been hard to imagine all the advances that we have
29 now or how things change. Because the Easement is forever and TransCanada gets

1 the rights in my land forever we have to think with a very long term view. By
2 placing their pipeline on, under, across, and through my land that prevents future
3 development which greatly negatively impacts future taxes and tax revenue that
4 could have been generated by the County and State but now will not. When you
5 look at the short blip of economic activity that the two years of temporary
6 construction efforts may bring, that is far outweighed by the perpetual and forever
7 loss of opportunity and restrictions TransCanada is forcing upon us and upon
8 Nebraska.

9 **Q: Do you have any concerns about the environmental impact of the proposed**
10 **pipeline?**

11 A: Yes, I do.

12 **Q: What are some of those concerns?**

13 A: As an affected land owner and Nebraskan, I am concerned that any construction,
14 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
15 a detrimental impact upon the environment of my land specifically, as well as the
16 lands near my land and surrounding the proposed pipeline route.

17 **Q: Do you have any other environmental concerns?**

18 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
19 construction and/or maintenance and operation. I am concerned about spills and
20 leaks that TransCanada has had in the past and will have in the future. This could
21 be catastrophic to my operations or others and to my county and the State. We
22 farmers and ranchers carry the collective wisdom of the generations that came
23 before us. All innovation must be undertaken or rejected based on an examination
24 of the risks versus the rewards. In our case, a leak like that in Freeman SD or even
25 the smaller leaks along Keystone 1 could permanently taint our water.

26 **Q: Do you have any thoughts regarding if there would be an impact upon the**
27 **natural resources on or near your property due to the proposed pipeline?**

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

resources of my land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of your land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same as it exists now undisturbed after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over your land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the groundwater of not only under my land, but also near and surrounding the pipeline route, and in fact, potentially the entire State of Nebraska. Water is life plain and simple and it is simply too valuable to our State and the country to put at unreasonable risk.

Q: Do you have any concern about the potential impact of the proposed pipeline upon the surface water on, or near or around your land?

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along and near and surrounding the pipeline route, and in fact, across the state of

1 Nebraska. In one of our quarters, the pipe would be a few feet below a waterway
2 that drains into the Niobrara River.

3 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
4 **upon the wildlife and plants, other than your growing crops on or near your**
5 **land?**

6 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
7 the proposed Keystone XL Pipeline would have a detrimental impact upon the
8 wildlife and the plants, not only that are located on or can be found upon my land,
9 but also near and along the proposed pipeline route.

10 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
11 **fair market value of your land?**

12 A: Yes, I do. I am significantly concerned about how the existence of the proposed
13 pipeline underneath and across and through my property will negatively affect the
14 fair market value at any point in the future, especially at that point in which I
15 would need to sell the property, or someone in my family would need to sell the
16 property. I do not believe, and certainly would not be willing to pay, the same
17 price for land that had the pipeline located on it, versus land that did not. I hope
18 there is never a point where I'm in a position where I have to sell and have to
19 realize as much value as I can out of my land. But because it is my single largest
20 asset, I'm gravely concerned that the existence of the proposed Keystone XL
21 Pipeline upon my land will affect a buyer's willingness to pay as much as they
22 would've paid and as much as I could've received, if the pipeline were not upon
23 my property. There are just too many risks, unknowns, impacts and uncertainties,
24 not to mention all of the rights you give up by the nature of having the pipeline
25 due to having the easement that we have previously discussed, for any reasonable
26 person to think that the existence of the pipeline would not negatively affect my
27 property's value.

28 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
29 **testimony?**

1 A: Yes, I have.

2 **Q: Where have you seen that before?**

3 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
4 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
5 believe the portion of the alternative route in Nebraska essentially twins or
6 parallels Keystone I.

7 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
8 **Application, and as found on Attachment No. 7, here to your testimony, is in**
9 **the public interest of Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe that the Keystone mainline alternative route as shown on**
12 **Attachment No. 7 included with your testimony here is a major oil pipeline**
13 **route that is in the public interest of Nebraska?**

14 A: No, I do not.

15 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
16 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
17 **your testimony, is in the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe there is any potential route for the proposed Keystone XL**
20 **Pipeline across, within, under, or through the State of Nebraska that is in the**
21 **public interest of the citizens of Nebraska?**

22 A: No, I do not.

23 **Q: Why do you hold that belief?**

24 A: Because there simply is no public interest based on all of the factors that I am
25 aware and that I have read and that I have studied that this Commission is to
26 consider that would establish that a for-profit foreign-owned pipeline that simply
27 crosses Nebraska because we are geographically in the way between where tar
28 sands are in Canada to where it wants to ship it to in Texas could ever be in the
29 public interest of Nebraskans. We derive no benefit from this project. It is not for

1 public use. Nebraska is simply in the way and when all considerations are taken in
2 there is no net benefit of any kind for Nebraska should this project be placed in our
3 state. Even if there was some arguable “benefit” it is not enough to outweigh all
4 the negative impacts and concerns.

5 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
6 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
7 **of Nebraska because it may bring temporary jobs during the construction**
8 **phase to Nebraska?**

9 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
10 temporary or on a permanent basis, don’t come with a project that has all the
11 potential and foreseeable negative impacts, many of which we have discussed here
12 and other witnesses throughout the course of this hearing have and will discuss. If
13 I decide to hire and employ someone to help me out in my farming or ranching
14 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
15 to my land or my town or my county or my state. And I’ve hired someone who is
16 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
17 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
18 jobs are not created equal. Additionally, I understand from what I’m familiar with
19 from TransCanada’s own statements that the jobs numbers they originally touted
20 were determined to be a minute fraction of the permanent jobs that had been
21 projected. According to their answer to our Interrogatory No. 191, TransCanada
22 has created only thirty-four (34) jobs within Nebraska working specifically on
23 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
24 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
25 Further, according to their answer to Interrogatory No. 199, TransCanada would
26 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL
27 were constructed on its Preferred Route or its Mainline Alternative Route.

28 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
29 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 Q: Would you be happier if instead of crossing your land, this proposed pipeline
4 was to cross someone else's land?

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 Q: Do you think there is any intelligent route for the proposed Keystone XL
10 Pipeline to cross the state of Nebraska?

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 Q: What do you rely upon to make that statement?

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Do you have any other concerns you would like to reiterate or can think of at**
4 **this time you would like the Commissioners to understand?**

5 **A:** Yes. I attended a presentation on human trafficking. A question was raised about
6 man camps with the proposed KXL. I have grave concerns about this and am
7 familiar with issues that arose from wind tower man camps.

8 **Q: Anything else?**

9 **A:** Yes. For us, this pipeline project would be at best inconvenient, and at the worst, a
10 disaster for our operation, but your consideration goes beyond this one family.
11 Your greater concern should be how this project fits Nebraska interests, is it a wise
12 thing to do for our state? My answer to this is 'NO'. The fault in this proposed
13 route is evident in the case of just one landowner, us. But multiply our concerns
14 and apply them across the state. From Antelope County north to the South Dakota
15 line, the route is fraught with challenges and risks. Much of this land, despite the
16 claim that the route has been moved out of the Sandhills, still carries all of the
17 risks presented but the earlier route. In fact, DEQ maps prior to 2011 showed that
18 our land IS Sandhills. While it is not within your jurisdiction to debate the safety
19 of the construction, it is most certainly within your responsibility to consider the
20 safety of the route. Sandhills soil or associated highly, permeable soil makes
21 potential and inevitable leaks, even small ones, particularly problematic.
22 Complicate that with our high water tables and our aquifer. Our land would see a
23 pipe actually sitting in water. This has been the case for many who have testified
24 against this project. Statistics assure us that leaks will happen. TransCanada
25 attempts to dismiss this reality with the thin claim that "any leak would only be
26 local". What does that mean? Furthermore, the Coast Guard recently concluded
27 that technology does not exist to clean the aquifer in the event of a leak. Wouldn't
28 the wise thing be to move this route off the aquifer to eliminate the risk altogether?
29 So, this route is inconvenient for us and it is unwise for Nebraskans. Most

1 importantly, "Is this necessary?" As landowners, we have come into negotiation
2 countless times where our land was needed for some larger purpose. On the road
3 to Ashfall Fossil Beds, the state of Nebraska notified us several years ago that the
4 road coming to Ashfall was going to be rerouted and that it would cut through our
5 land. Discussions with Cap Dierks, our then state senator, convinced us of the
6 benefit to tourism in Northeast Nebraska as well as the improved safety to drivers.
7 Amicable discussions resulted in the rerouting through our land but
8 accommodations were implemented that we needed for our operation. More
9 recently, we were approached about a proposed power line project that would
10 come onto our land and that would require removal of trees. While it was not
11 ideal for us, we agreed because it was clearly a project that met the criteria of
12 'public good'. Negotiations were honest, open and respectful and our needs and
13 wishes were written into the project. A third project included a gas pipeline that
14 was installed along one of our fields. Again, we negotiated, saw the necessity, and
15 presented our needs. The line was installed and we were treated fairly. In the case
16 of the Keystone XL Pipeline, it doesn't produce safer roads for Nebraska citizens,
17 it does not generate power for our citizenry, it does nothing for the public good
18 that would warrant the power to use eminent domain to take my land. It is a for
19 profit project. You have the capacity to confirm that this route is not convenient,
20 it is not wise, and it is not necessary.

21 **Q: Any other concerns?**

22 **A:** In the case of the Keystone XL Pipeline, contrast it with the easements I just
23 explained to you. Unlike those examples this project doesn't produce safer roads
24 for Nebraska citizens; it does not generate power for our citizenry; it does nothing
25 for the public good that would warrant the power to use eminent domain to take
26 my land. It is a for profit project.

27 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
28 **like the Public Service Commissioners to consider in their review of**
29 **TransCanada's Application?**

1 A: No, I have not. I have shared that which I can think of as of the date I signed this
2 document below but other things may come to me or my memory may be
3 refreshed and I will add and address those things at the time of the Hearing in
4 August and address any additional items at that time as is necessary. Additionally,
5 I have not had an adequate amount of time to receive and review all of
6 TransCanada's answers to our discovery and the discovery of others so it was
7 impossible to competently and completely react to that in my testimony here and I
8 reserve the right to also address anything related to discovery that has not yet
9 concluded as of the date I signed this document below. Lastly, certain documents
10 requested have not yet been produced by TransCanada and therefore I may have
11 additional thoughts on those I will also share at the hearing as needed.

12 **Q: What is it that you are requesting the Public Service Commissioners do in**
13 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
14 **across Nebraska?**

15 A: I am respectfully and humbly requesting that the Commissioners think far beyond
16 a temporary job spike that this project may bring to a few counties and beyond the
17 relatively small amount of taxes this proposed foreign pipeline would possibly
18 generate. And, instead think about the perpetual and forever impacts of this
19 pipeline as it would have on the landowners specifically, first and foremost, but
20 also thereby upon the entire state of Nebraska, and to determine that neither the
21 preferred route nor the Keystone mainline alternative route are in the public
22 interest of the citizens of the state of Nebraska. And if the Commissioners were
23 inclined to modify TransCanada's proposed routes and were to be inclined to grant
24 an application for a route in Nebraska, that the only potential route that would
25 make any intelligent sense whatsoever would be twinning or near paralleling of
26 the proposed KXL with the existing Keystone I pipeline. It simply does not make
27 sense to add yet another major oil pipeline crisscrossing our state creating new
28 pumping stations, creating new impacts on additional counties and communities
29 and going through all of the court processes with us and other landowners like us

1 when this applicant already has relationships with the landowners, the towns and
2 the communities along Keystone I, and that Keystone I is firmly outside of the
3 sand hills and a significantly further portion away from the heart of the Ogallala
4 Aquifer than the preferred route or the Keystone mainline alternative route.

5 **Q: Anything else?**

6 A: Real wisdom is the clear understanding of our strengths and our weaknesses. For
7 an ag state such as Nebraska, our challenge is the large expanse of marginal soil.
8 This challenge has been mitigated because of our most incredible resource, the
9 Ogallala Aquifer. With the invention of technology that allows us to utilize this
10 resource, we have been able to transform our agriculture in a few decades. But
11 this resource is a precious gift, one that will only become more valuable in the
12 future. Our water IS our future, here in Nebraska. Risking that gift for the false
13 promise of a few jobs, for the claim of energy independence or a boon to our tax
14 income. The jobs claims have been proven false. Foreign tar sands transported
15 through our state to be exported to China makes the energy independence claim
16 laughable. Even the few years of a small tax boost is quickly offset with the
17 longer-range cost of removal of abandoned equipment, a cost that falls on the
18 landowner. When considering your stand on this issue, I would ask you to
19 envision with me the view from my front yard. We have hosted journalists from
20 all over the world: from France, from Great Britain, from Canada, journalists from
21 New York, from Washington D.C., and from Los Angeles. World class
22 photographers have walked and photographed this pipeline route and the people
23 along it, yet not one Nebraska journalist has visited us to see our concerns. Not
24 one state or national elected representative has sat down with us to hear our
25 perspective. Though TransCanada would have you believe that we are
26 environmental terrorists, radicals, just look at us. We are grandmothers and
27 grandfathers, moms and dads that love our land and know our land. We are
28 specialists in our sphere and we urge you to not just listen, but hear the appeal we
29 make here for all Nebraskans, current and future.

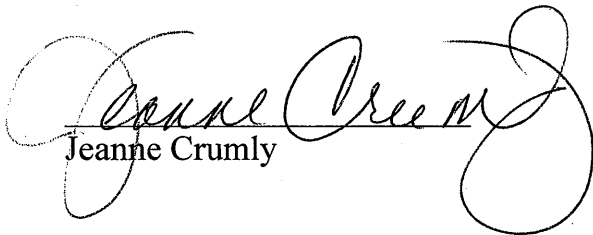
1 **Q:** **Does Attachment No. 8 here contain other documents you are competent to**
2 **speak about that you wish to be part of your testimony and to discuss in more**
3 **detail as needed at the August 2017 Hearing?**

4 **A:** Yes.


5 **Q:** **Are all of your statements in your testimony provided above true and**
6 **accurate as of the date you signed this document to the best of your**
7 **knowledge?**

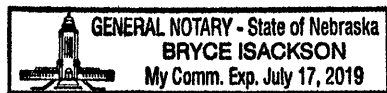
8 **A:** Yes, they are.

9 **Q:** **Thank you, I have no further questions at this time and reserve the right to**
10 **ask you additional questions at the August 2017 Hearing.**


Jeanne Crumly

Subscribed and Sworn to me before this 25th day of May, 2017.


Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Seth Davis in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Antelope County)

1 **Q: Please state your name.**

2 A: My name is Seth Davis. I am the grandson of Germaine Berry. I am the nephew of
3 Karen Berry.

4 **Q: Are you an intervener in the Public Service Commission's proceedings**
5 **regarding TransCanada's application for approval of its proposed Keystone**
6 **XL tar sands pipeline across Nebraska?**

7 A: No, but I am a tenant of Germaine Berry who is a Landowner Intervenor. I farm
8 her land that would be affected by the proposed preferred pipeline route of
9 TransCanada. That land is located in Antelope County.

10 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
11 **photo(s) of the land in question here with the area of the proposed KXL**
12 **pipeline depicted?**

13 A: Yes.

14 **Q: What do you do for a living?**

15 A: I am Farmer.

EXHIBIT

18

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Q: For the land that would be affected and impacted by the proposed KXL tar sands pipeline give the Commissioners a sense how long the land has been in your family.

A: The land has been in the Berry family since the 1950s. The soil is very sandy and porous. However, due to a high water table, there is a permanent moist area running through the middle of the property. This area has not been farmed for several decades, because farm equipment tended to get stuck, and wet weather prevents a good crop. The farmland has proved unusually productive for dryland farming, because the high water table puts adequate water into the root zone of plantings. There is a danger that the digging that accompanies the pipeline will disrupt the hydrology of the area, easing the drainage and dropping the water table, to the detriment of dryland farming. Conversely, blocking drainage as it crosses the wet area could have a damming effect. There is no guarantee in the easement against pipeline-induced changes in the water table, or monitoring of any changes.

Q: Do you earn any income from this land?

A: Yes.

Q: Have you depended on the income from the land to support your livelihood or the livelihood of your family?

A: Yes.

Q: Do you have concerns about your grandmother being able to selling the land?

A: Well I hope she never has to sell the land but as a farmer who is familiar with what factors you consider when bidding on farm land, I am concerned that if another piece of ground similar to hers was for sale at the same time and it did not have the pipeline and hers did that she would have a lower selling price. I think this would be true for pipeline ground on both the preferred and mainline alternative routes.

Q: Have you thought about whether or not you would be willing to pay the same rental payments for the land if the proposed route is approve and the KXL pipeline goes through the land as you are today without it?

1 A: Yes, I have thought of it and that concerns me. As a business owner and farmer I
2 have to also control my costs and risks the best I can. For instance, if there are
3 damages to crops and loss in yields, I need to take that real possibility into
4 account. I need to factor in the likelihood of deferred payment or no payment or
5 even budgeting in legal expenses to fight about damages caused by the pipeline.
6 These are all real world things that have and do occur. I just don't know if I could
7 agree to carry on with the same payment arrangements if the land were to change
8 so dramatically as it would if a major oil pipeline is present.

9 Q: Was your grandmother or an entity for which she is a member, shareholder,
10 or director previously sued by TransCanada Keystone Pipeline, LP?

11 A: Yes, in 2015. TransCanada Keystone Pipeline LP sued her by filing a petition for
12 condemnation against her land so it could place its proposed pipeline within an
13 easement that it wanted to take from her.

14 Q: Did she defend herself and the land in that condemnation action?

15 A: Yes and lawyers were hired to assist.

16 Q: Has TransCanada reimbursed her for any of the expenses or costs for fees
17 incurred?

18 A: No, they have not.

19 Q: Did TransCanada describe what rights it proposed to take related to the
20 eminent domain property on the land?

21 A: Yes, they did.

22 Q: What rights that they proposed to take did they describe?

23 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
24 operate, and maintain the pipeline and the plant and equipment reasonably
25 necessary to operate the pipeline, specifically including surveying, laying,
26 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
27 reconstructing, removing and abandoning one pipeline, together with all fittings,
28 cathodic protection equipment, pipeline markers, and all their equipment and

1 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
2 petroleum products, and all by-products thereof.”

3 **Q: Prior to filing an eminent domain lawsuit, do you believe TransCanada**
4 **attempted to negotiate in good faith?**

5 **A:** No, I do not.

6 **Q: Have you ever reviewed TransCanada’s proposed easement and right-of-way**
7 **agreement?**

8 **A:** Yes.

9 **Q: Have you reviewed TransCanada’s easement and right-of-way agreement,**
10 **did if so, what did you understand that they would be purchasing - a fee title**
11 **interest in the property or that they were taking something else?**

12 **A:** I understood that they proposed to have the power to take both a temporary
13 construction easement that could last for a certain period of time and then also a
14 permanent easement which they described to be 50 feet across or in width, and
15 that would run the entire portion of the property from where a proposed pipeline
16 would enter the property until where it would exit the property.

17 **Q: Is the document included with your testimony here as Attachment No. 2, a**
18 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
19 **Way agreement that they included with their condemnation lawsuit?**

20 **A:** Yes, it is.

21 **Q: What is your understanding of the significance of the Easement and Right-of-**
22 **Way agreement as proposed by TransCanada?**

23 **A:** My understanding is that this is the document that will govern all of the rights and
24 obligations and duties as well as the limitations of what can and cannot be done
25 and how I and any landowner and any person I invite to come onto the property
26 must behave as well as what TransCanada is and is not responsible for and how
27 they can use the land.

28 **Q: After reviewing TransCanada’s proposed Easement and Right-of-Way**
29 **agreement do you have any concerns about any portions of it or any of the**

1 language either included in the document or missing from the proposed
2 document?

3 A: Yes, I have a number of significant concerns and worries about the document and
4 how the language included and the language not included potentially negatively
5 impacts the land, my rights, and thereby potentially negatively impacts my
6 community and my state.

7 Q: I would like you to walk the Commissioners through each and every one of
8 your concerns about TransCanada's proposed Easement and Right-of-Way
9 agreement so they can develop an understanding of how that language and
10 the terms of that contract, in your opinion, potentially negatively impacts you
11 and the land. So, if you can start at the beginning of that document and let's
12 work our way through it, okay?

13 A: Yes.

14 Q. Let's start with your first concern please.

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate for all of the known and unknown affects and all of the rights
17 being given up and for all the things they get to do to the land and for what they
18 will prevent us from doing on the land and they only will pay a one time at the
19 signing of the easement agreement. That is a huge problem.

20 Q: Explain to the Commissioners why that is a problem.

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have the land forever for use as they see fit so
23 they can make a daily profit from their customers. As a tenant, I lease the ground
24 and I pay twice a year every year so periodically and annually. That only makes
25 sense – that is fair. If I was going to rent a house in town I would typically pay
26 monthly, every month until I gave up my right to use that house. By TransCanada
27 getting out on the cheap and paying once in today's dollars that is monthly, bi-
28 annual, or at least an annual loss in tax revenue collection on the money the
29 landowner would be paid and then pay taxes on and contribute to this state and

1 this country. It is money the landowner would be putting back into the local
2 community both spending and stimulating the local economy and generating more
3 economic activity right here. Instead TransCanada's shareholders keep the money
4 and it never finds its way to Nebraska.

5 **Q: What is your next concern?**

6 **A:** The first paragraph goes on to say Grantor, which is the landowner, "does hereby
7 grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited
8 partnership..." and I have no idea who that really is. I have no idea who is forcing
9 this pipeline on us or who the owners of the entities are, or what are the assets
10 backing this limited partnership, or who the general partner is, or who all the
11 limited partners are, and who makes up the ownership of the these partners or the
12 structure or any of the basic things you would want to know and understand if you
13 would want to do business with such an outfit. According to TransCanada's
14 answer to Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since my understanding is the general
18 partner has the liability but virtually none of the ownership and who knows if it
19 has any other assets.

20 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
21 **percent clear on exactly who could become the owner of about 275 miles of**
22 **Nebraska land?**

23 **A:** No.

24 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
25 **percent clear on exactly who will be operating and responsible for**
26 **approximately 275 miles of tar sands pipeline underneath and through**
27 **Nebraska land?**

28 **A:** No.

1 **Q:** Okay, let's continue please with your concerns of the impacts upon the land
2 and the State of Nebraska of TransCanada's easement terms.

3 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
4 called "Grantee")..." and this concerns me because it would allow the easement to
5 be transferred or sold to someone or some company or country or who knows what
6 that we don't know and who we may not want to do business with. This pipeline
7 would be a huge asset for TransCanada and if they can sell to the highest bidder
8 that could have terrible impacts upon all of Nebraska depending upon who may
9 buy it and I don't know of any safeguards in place for us or the State to veto or
10 have any say so in who may own, operate, or be responsible for this pipeline in the
11 future.

12 **Q:** Do you think that type of uncertainty and lack of control over a major piece
13 of infrastructure crossing our State is in the public interest?

14 **A:** No, certainly not, in fact, just the opposite.

15 **Q:** What's next?

16 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
17 really concerns me. Why does the easement and right-of-way have to be perpetual
18 and permanent? That is the question my family and I want an answer to. Perpetual
19 to me is forever and that doesn't make sense.

20 **Q:** Why doesn't a perpetual Easement and Right-of-Way make sense to you?

21 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
22 data proving there is a perpetual supply of tar sands. I am not aware in
23 TransCanada's application where it proves there is a perpetual necessity for this
24 pipeline. My understanding of energy infrastructure like wind towers is they have
25 a decommission plan and actually take the towers down when they become
26 obsolete or no longer needed. Nothing manmade lasts forever. The land however
27 will, if we are all smart about this, and I want my family or future Nebraska
28 families to have that land as undisturbed as possible and it is not in my interest or

1 the public interest of Nebraska to be forced to give up perpetual and permanent
2 rights in the land for this specific kind of pipeline project.

3 **Q: Okay, what is your next concern?**

4 A: The easement language includes all these things TransCanada can do and it says
5 "...abandoning in place..." so they can just leave this pipeline under the ground
6 until the end of time just sitting there while they are not using it, but we are still
7 prevented from doing on the land and using the land as we would like. If I owned
8 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
9 there. It doesn't make sense and it scares me and it is not in our interest or the
10 public interest of Nebraska to allow this.

11 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
12 **right?**

13 A: Yes.

14 **Q: So now on the second page of the Easement what are your concerns?**

15 A: Here the Easement identifies a 24-month deadline to complete construction of the
16 pipeline but has caveats that are undefined and ambiguous. The 24-month period
17 starts to run from the moment "actual pipeline installation activities" begin on
18 Landowners property. It appears that TransCanada would define this phrase as
19 needed. It would be wise to explain what types of TransCanada action constitutes
20 "installation activity" For instance, would the placement and storage of an
21 excavator or other equipment on or near the Easement property be an activity or
22 would earth have to be moved before the activity requirement is triggered. This
23 vague phrase is likely to lead to future disputes and litigation that is not in the best
24 interest of the welfare of Nebraska and would not protect property interests. The
25 24-months can also be extended in the case of "force majeure." My understanding
26 is that force majeure is often used to insulate a party to a contract when events
27 occur that are completely out of their control. In TransCanada's easement this is
28 expanded to include "without limitation...availability of labor and materials."
29 Extending this language to labor and materials is problematic because these are

two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two

1 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
2 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
3 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
4 copy of the Federal Court Complaint is here as **Attachment No. 3.**

5 **Q: What is your next concern with the Easement language?**

6 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
7 they choose unless 1) any Landowner use interferes in any way with
8 TransCanada's exercise of any of its rights within the Easement, or 2)
9 TransCanada decides to take any action on the property it deems necessary to
10 prevent injury, endangerment or interference with anything TransCanada deems
11 necessary to do on the property. Landowner is also forbidden from excavating
12 without prior authorization by TransCanada. So my understanding is that
13 TransCanada will unilaterally determine what Landowner can and can't do based
14 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
15 could also completely deny my request to excavate. Further, TransCanada retains
16 all "privileges necessary or convenient for the full use of the rights" granted to
17 them in the Easement. Again, TransCanada unilaterally can decide to the
18 detriment of the property rights of Landowner what TransCanada believes is
19 necessary or convenient for it. And there is no option for any additional
20 compensation to landowner for any right exercised by TransCanada that leads to
21 the removal of trees or plants or vegetation or buildings or structures or facilities
22 owned by Landowner of any kind. Such undefined and unilateral restrictions and
23 rights without having to compensate Landowner for such further destruction or
24 losses are not conducive to the protection of property rights or economic interest.

25 **Q: What is the next concern you have?**

26 A: The Easement also allows some rights for Landowner but restricts them at the
27 same time and again at the sole and unilateral decision making of TransCanada.
28 TransCanada will determine if the actions of Landowner might in anyway
29 endanger or obstruct or interfere with TransCanada's full use of the Easement or

any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel “within and along Easement Area on foot or in vehicle or machinery...” Further at TransCanada’s sole discretion it will retain the rights to prevent any landowner activity that it thinks may “unreasonably impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner’s land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase “where rock is encountered” mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada’s preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for

documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest. As a lawyer I understand the importance of terms, of the fine print of contracts, and there simply must be language that requires TransCanada to pay for any leaks and damage and to remove the pipeline when it is no longer used. They should have to pay dearly for what they are doing. The possibility of contamination is too great to leave it in the ground for our heirs to deal with.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative the their property in preparation or planning of TransCanada’s taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the

ability of the future Landowner to modify or negotiation any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"

- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you or the land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q:** As the farmer of the land in question and as the person who knows it better
2 than anyone else, do you believe that TransCanada offered a just, or fair,
3 compensation for all of what they proposed to take so that their tar sands
4 pipeline could be located across the property?

5 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
6 offer for all the potential impacts and effects and the rights that are being given up,
7 and what will be prevented from doing in the future and how their pipeline would
8 impact the property forever and ever.

9 **Q:** Has TransCanada at any time offered annual compensation, such as wind
10 farm projects do, for the existence of their potential tar sands pipeline across
11 the property.

12 **A:** No, never.

13 **Q:** Has TransCanada ever contacted you and specifically asked you if you
14 thought their proposed location of their proposed pipeline across the land was
15 in your best interest?

16 **A:** No, they have not.

17 **Q:** Has TransCanada ever contacted you and specifically asked you if you
18 thought their proposed location of their proposed pipeline across the land was
19 in the public interest of the State of Nebraska?

20 **A:** No, they have not.

21 **Q:** Are you familiar with the Fifth Amendment to the U.S. Constitution and the
22 Takings Clause?

23 **A:** Yes, I am.

24 **Q:** What is your understanding of the Fifth Amendment as it relates to taking of
25 an American citizens property?

26 **A:** My understanding is that, according to the United States Constitution, that if the
27 government is going to take land for public use, then in that case, or by taking for
28 public use, it can only occur if the private land owner is compensated justly, or
29 fairly.

1 **Q:** **Has TransCanada ever contacted you specially to explain the way in which**
2 **the public could use its proposed Keystone XL Pipeline?**

3 **A:** **No, they have not.**

4 **Q:** **Can you think of any way in which the public, that is the citizens of the State**
5 **of Nebraska, can directly use the proposed TransCanada Keystone XL**
6 **Pipeline, as it dissects the State of Nebraska?**

7 **A:** **No, I cannot. I cannot think of any way to use this pipeline. I do not see how the**
8 **public benefits from this pipeline in any way, how they can use it any way, or how**
9 **it's in the public interest in any way. By looking at the map, it is quite clear to me**
10 **that the only reason it's proposed to come through Nebraska, is that because we**
11 **are geographically in the way from between where the privately-owned Tar Sands**
12 **are located to where TransCanada wants to ship the Tar Sands to refineries in**
13 **Houston, Texas.**

14 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
15 **crude petroleum, or oil and petroleum by-products that you would like to**
16 **ship in its pipeline?**

17 **A:** **No, it has not.**

18 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
19 **products that you, at this time or any time in the future, would desire to place**
20 **for transport within the proposed TransCanada Keystone XL Pipeline?**

21 **A:** **No, I do not.**

22 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
23 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
24 **products within the proposed TransCanada Keystone XL Pipeline?**

25 **A:** **No, I do not. I've never heard of such a person or company like that.**

26 **Q:** **Have you at any time ever employed any person other than yourself?**

27 **A:** **Well, yes I have.**

28 **Q:** **Do you believe that the fact that you have, at some point in your life,**
29 **employed one or more other persons entitle you to any special treatment or**

1 consideration above and beyond any other Nebraskan that has also employed
2 one or more persons?

3 A: No, of course not.

4 Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer
5 have at one point employed another person within this state, entitles you to
6 preferential treatment or consideration of any kind?

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 Q: Do you have any concerns TransCanada's fitness as an applicant for a major
10 crude oil pipeline in its preferred location, or ultimate location across the
11 state of Nebraska?

12 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
13 or even bullied around and being made to feel scared that they did not have any
14 options but to sign whatever papers TransCanada told them they had to. I am
15 aware of folks being threatened that their land would be taken if they didn't follow
16 what TransCanada was saying. I am aware of tactics to get people to sign
17 easements that I don't believe have any place in Nebraska or anywhere such as
18 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
19 landowners and convince them they should sign TransCanada's easement
20 agreements. I am aware of older folks and widows or widowers feeling they had
21 no choice but to sign TransCanada's Easement and they didn't know they could
22 fight or stand up for themselves. From a more practical standpoint, I am worried
23 that according to their answer to Interrogatory No. 211, TransCanada only owns
24 and operates one (1) major oil pipeline. They simply do not have the experience
25 with this type of pipeline and that scares me. There are others but that is what I can
26 recollect at this time and if I remember more or my recollection is refreshed I will
27 share those with the Commissioners at the Hearing in August.

28 Q: Do you have any concern about limitations that the construction of this
29 proposed pipeline across your affected land would prevent construction of

1 future structures upon the portion of the land affected by the proposed
2 easement and immediately surrounding areas?

3 A: Well yes, of course I do. We would not be able to build many, if any, types of
4 structures directly across or touching the easement, and it would be unwise and I
5 would be uncomfortable to build anything near the easement for fear of being
6 blamed in the future should any damage or difficulty result on the property in
7 regards to the pipeline.

8 **Q: Do you think such a restriction would have economic impacts?**

9 A: Well yes, of course.

10 **Q: How do you think such a restriction would impact you economically?**

11 A: The future of this land may not be exactly how it's being used as of this moment,
12 and having the restrictions and limiting my ability to develop the land in certain
13 ways presents a huge negative economic impact on myself, my family, and any
14 potential future farmer or owner of the property. Fifty years ago it would have
15 been hard to imagine all the advances that we have now or how things change.
16 Because the Easement is forever and TransCanada gets the rights in the land
17 forever we have to think with a very long term view. By placing their pipeline on
18 under across and through the land that prevents future development which greatly
19 negatively impacts future taxes and tax revenue that could have been generated by
20 the County and State but now will not. When you look at the short blip of
21 economic activity that the two years of temporary construction efforts may bring,
22 that is far outweighed by the perpetual and forever loss of opportunity and
23 restrictions TransCanada is forcing upon us and Nebraska.

24 **Q: Do you have any concerns about the environmental impact of the proposed**
25 **pipeline?**

26 A: Yes, I do.

27 **Q: What are some of those concerns?**

28 A: I am concerned that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have a detrimental impact upon the

environment of the land specifically, as well as the lands near this land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of the land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of the land in question, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of the property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on the property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over the land, or surrounding lands?

1 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
2 the proposed Keystone XL Pipeline would have a detrimental impact upon the
3 groundwater of not only under the land, but also near and surrounding the pipeline
4 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
5 simple and it is simply too valuable to our State and the country to put at
6 unreasonable risk.

7 **Q: Do you have any concern about the potential impact of the proposed pipeline**
8 **upon the surface water on, or near or around the land?**

9 A: Yes, I have significant concerns that any construction, operation, and/or
10 maintenance of the proposed Keystone XL Pipeline would have detrimental
11 impact upon the surface water of not only within the property boundary, but along
12 and near and surrounding the pipeline route, and in fact, across the state of
13 Nebraska.

14 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
15 **upon the wildlife and plants, other than your growing crops on or near the**
16 **land?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 wildlife and the plants, not only that are located on or can be found upon the land,
20 but also near and along the proposed pipeline route.

21 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
22 **fair market value of the land?**

23 A: Yes, I do. I am significantly concerned about how the existence of the proposed
24 pipeline underneath and across and through the property will negatively affect the
25 fair market value at any point in the future, especially at that point in which
26 someone in my family would need to sell the property. I do not believe, and
27 certainly would not be willing to pay, the same price for land that had the pipeline
28 located on it, versus land that did not. There are just too many risks, unknowns,
29 impacts and uncertainties, not to mention all of the rights you give up by the

1 nature of having the pipeline due to having the easement that we have previously
2 discussed, for any reasonable person to think that the existence of the pipeline
3 would not negatively affect the property's value.

4 **Q:** Do you believe that TransCanada's preferred route as found on page 5 of its
5 Application, and as found on Attachment No. 4, here to your testimony, is in
6 the public interest of Nebraska?

7 **A:** No, I do not.

8 **Q:** Do you believe that the Keystone mainline alternative route as shown on
9 Attachment No. 4 included with your testimony here is a major oil pipeline
10 route that is in the public interest of Nebraska?

11 **A:** No, I do not.

12 **Q:** Do you believe there is any potential route for the proposed Keystone XL
13 Pipeline across, within, under, or through the State of Nebraska that is in the
14 public interest of the citizens of Nebraska?

15 **A:** No, I do not.

16 **Q:** Why do you hold that belief?

17 **A:** Because there simply is no public interest based on all of the factors that I am
18 aware and that I have read and that I have studied that this Commission is to
19 consider that would establish that a for-profit foreign-owned pipeline that simply
20 crosses Nebraska because we are geographically in the way between where tar
21 sands are in Canada to where it wants to ship it to in Texas could ever be in the
22 public interest of Nebraskans. We derive no benefit from this project. It is not for
23 public use. Nebraska is simply in the way and when all considerations are taken in
24 there is no net benefit of any kind for Nebraska should this project be placed in our
25 state. Even if there was some arguable "benefit" it is not enough to outweigh all
26 the negative impacts and concerns.

27 **Q:** What do you think about the applicant, TransCanada's argument that it's
28 preferred route for its proposed Keystone XL Pipeline is in the public interest

1 of Nebraska because it may bring temporary jobs during the construction
2 phase to Nebraska?

3 A: First of all, not all jobs are created equally. Most jobs that are created, whether
4 temporary or on a permanent basis, don't come with a project that has all the
5 potential and foreseeable negative impacts, many of which we have discussed here
6 and other witnesses throughout the course of this hearing have and will discuss. If
7 I decide to hire and employ someone to help me out in my farming or ranching
8 business, I've created a job but I haven't done so at the risk or detrimental impact
9 to the land or my town or my county or my state. And I've hired someone who is
10 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
11 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
12 jobs are not created equal. Additionally, I understand from what I'm familiar with
13 from TransCanada's own statements that the jobs numbers they originally touted
14 were determined to be a minute fraction of the permanent jobs that had been
15 projected. According to their answer to our Interrogatory No. 191, TransCanada
16 has created only thirty-four (34) jobs within Nebraska working specifically on
17 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
18 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
19 Further, according to their answer to Interrogatory No. 199, TransCanada would
20 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
21 constructed on its Preferred Route or its Mainline Alternative Route.

22 Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply
23 because it would cross the land?

24 A: No, absolutely not. I am opposed to this project because it is not in the public
25 interest, neither within my community nor within our state.

26 Q: Would you be happier if instead of crossing the land, this proposed pipeline
27 was to cross someone else's land?

28 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
29 the fear and anxiety and potential foreseeable risks and negative impacts that this

1 type of a project carrying this type of product brings foisted upon anyone in this
2 state or any other state.

3 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
4 **Pipeline to cross the state of Nebraska?**

5 A: I don't believe there is an intelligent route because as I have stated I don't believe
6 this project anywhere within Nebraska is within the public interest. However, if
7 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
8 had to go somewhere in the state of Nebraska, the only intelligent route I believe
9 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
10 preferred route and the mainline alternative routes are economic liabilities our
11 state cannot risk.

12 **Q: What do you rely upon to make that statement?**

13 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
14 already exists in that area is reason enough as it is not in our best interest or the
15 public interests to have more major oil pipelines crisscrossing our state. Second,
16 they have all the infrastructure already there in terms of relationships with the
17 counties and local officials and first responders along that route. Third, they have
18 already obtained easements from all the landowners along that route and have
19 relationships with them. Fourth, that route avoids our most sensitive soils, the
20 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
21 Aquifer. Sixth, they have already studied that route and previously offered it as an
22 alternative. Seventh, it just makes the most sense that as a state we would have
23 some intelligent policy of energy corridors and co-locating this type of
24 infrastructure near each other.

25 **Q: Do you have any other concerns you would like to reiterate or can think of at**
26 **this time you would like the Commissioners to understand?**

27 A: Yes. I would never buy land with an oil pipeline running under it. You could
28 never have underground sprinklers or irrigation which may be the wave of the
29 future. We could never put a home on the land because we can't excavate so it

1 stops us from freely using the land as we might wish to in the future. My family
2 will be affected for many decades to come and in a manner that is not even
3 foreseeable at present. Dirty oil flowing under the land and the contamination of
4 the land by putting something completely unnatural under the soil and then having
5 it placed right above the valuable and pristine Ogallala aquifer decreases the value
6 of the land. It is my understanding that pipelines leak and leak without detection
7 many times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

8 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
9 **like the Public Service Commissioners to consider in their review of**
10 **TransCanada's Application?**

11 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
12 document below but other things may come to me or my memory may be
13 refreshed and I will add and address those things at the time of the Hearing in
14 August and address any additional items at that time as is necessary. Additionally,
15 I have not had an adequate amount of time to receive and review all of
16 TransCanada's answers to our discovery and the discovery of others so it was
17 impossible to competently and completely react to that in my testimony here and I
18 reserve the right to also address anything related to discovery that has not yet
19 concluded as of the date I signed this document below. Lastly, certain documents
20 requested have not yet been produced by TransCanada and therefore I may have
21 additional thoughts on those I will also share at the hearing as needed.

22 **Q: What is it that you are requesting the Public Service Commissioners do in**
23 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
24 **across Nebraska?**

25 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
26 a temporary job spike that this project may bring to a few counties and beyond the
27 relatively small amount of taxes this proposed foreign pipeline would possibly
28 generate. And, instead think about the perpetual and forever impacts of this
29 pipeline as it would have on the landowners specifically, first and foremost, but

1 also thereby upon the entire state of Nebraska, and to determine that neither the
2 preferred route nor the Keystone mainline alternative route are in the public
3 interest of the citizens of the state of Nebraska. And if the Commissioners were
4 inclined to modify TransCanada's proposed routes and were to be inclined to grant
5 an application for a route in Nebraska, that the only potential route that would
6 make any intelligent sense whatsoever would be twinning or near paralleling of
7 the proposed KXL with the existing Keystone I pipeline. It simply does not make
8 sense to add yet another major oil pipeline crisscrossing our state creating new
9 pumping stations, creating new impacts on additional counties and communities
10 and going through all of the court processes with myself and other landowners like
11 me when this applicant already has relationships with the landowners, the towns
12 and the communities along Keystone I, and that Keystone I is firmly outside of the
13 sand hills and a significantly further portion away from the heart of the Ogallala
14 Aquifer than the preferred route or the Keystone mainline alternative route.

15 **Q: Are all of your statements in your testimony provided above true and**
16 **accurate as of the date you signed this document to the best of your**
17 **knowledge?**

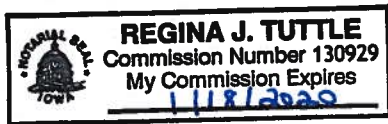
18 **A:** Yes, they are.

19 **Q: Thank you, I have no further questions at this time and reserve the right to**
20 **ask you additional questions at the August 2017 Hearing.**

Seth Davis, POA for Germaine G. Berry
Seth Davis, Power of Attorney for Germaine G. Berry

Subscribed and Sworn to me before this 6th day of June, 2017.

Regina J. Tuttle
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
William Dunavan in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
York County)

1 **Q: Please state your name.**

2 A: My name is William Dunavan.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in York County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: Susan Dunavan.

EXHIBIT

19

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1 **Q: Do you have children?**

2 A: Yes, five.

3 **Q: Do you have grandchildren?**

4 A: Yes, nine living and two that have passed away.

5 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
6 **and or your family?**

7 A. Yes.

8 **Q: For the land that would be affected and impacted by the proposed KXL tar**
9 **sands pipeline give the Commissioners a sense how long the land has been in**
10 **your family and a little history of the land.**

11 A: When we purchased our land in 1979 the previous owner requested that the land
12 be kept as pastureland and not be farmed. We were very willing to make this
13 promise as that was our intention all along...to keep the property as pastureland
14 and to increase the varieties of native grasses, flowers, and forbes. This land has
15 become our heritage over the years and is one of the last stands of native prairie in
16 York County. We paid on this land for 30 years, working overtime and our
17 American Dream is now gone. This land is where our children were raised and
18 where our grandchildren come and run and explore. To us this land is priceless.
19 There is an intermittent stream that runs through our property as well as about 6
20 acres of woods. The combination of prairie, stream bed and small forest makes for
21 an immense diversity of plant and animal life. There have been new discoveries in
22 every season over the past 38 years and we hope our family's hard work and love
23 of the land will not be torn apart.

24 **Q: What do you do for a living?**

25 A: My wife and I own a crop consulting business called Nebraska Crop and Soil
26 Systems. We started the business in 1978 and currently consult with
27 approximately 30 farms in a 45 mile radius of York, Nebraska. I am the President
28 and consultant and my wife is the Secretary, Treasurer, and Chief Investigator for
29 all background work that needs to be done in running a business.

1 **Q: Do you earn any income from this land?**

2 A: Yes.

3 **Q: Have you depended on the income from your land to support your livelihood**
4 **or the livelihood of your family?**

5 A: Yes.

6 **Q: Have you ever in the past or have you thought about in the future leasing all**
7 **or a portion of your land in question here?**

8 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
9 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
10 all the restrictions and risks and potential negative impacts to farming or ranching
11 operations as opposed to land that did not have those same risks. If I was looking
12 to lease or rent ground I would pay more for comparable non-pipeline land than I
13 would for comparable pipeline land and I think most folks would think the same
14 way. This is another negative economic impact that affects the landowner and the
15 county and the state and will forever and ever should TransCanada's preferred or
16 mainline alternative routes be approved.

17 **Q: Do you have similar concerns about selling the land?**

18 A: Well I hope not to have to sell the land in my lifetime but times change and you
19 never know what is around the corner and yes I am concerned that if another piece
20 of ground similar to mine were for sale and it did not have the pipeline and mine
21 did that I would have a lower selling price. I think this would be true for pipeline
22 ground on both the preferred and mainline alternative routes.

23 **Q: What is your intent with your land after you die?**

24 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
25 to come but I have thought about getting out if this pipeline were to come through.

26 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
27 **Pipeline would cross the land described above and owned by you?**

28 A: Yes.

1 **Q: Were you or an entity for which you are a member, shareholder, or director**
2 **previously sued by TransCanada Keystone Pipeline, LP?**

3 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
4 petition for condemnation against our land so it could place its proposed pipeline
5 within an easement that it wanted to take from us on our land.

6 **Q: Did you defend yourself and your land in that condemnation action?**

7 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
8 and expenses in our resistance of TransCanada's lawsuit against us.

9 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
10 **incurred?**

11 **A:** No, they have not.

12 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
13 **property that it wanted to take for its proposed pipeline?**

14 **A:** The lawsuit against us stated they would take the amount of property that is
15 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
16 and equipment reasonably necessary to operate the pipeline.

17 **Q: Did TransCanada define what they meant by "property that is reasonably**
18 **necessary"?**

19 **A:** No, they did not.

20 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
21 **property portion of your land?**

22 **A:** Yes, they did.

23 **Q: Did TransCanada describe what rights it proposed to take related to the**
24 **eminent domain property on your land?**

25 **A:** Yes, they did.

26 **Q: What rights that they proposed to take did they describe?**

27 **A:** TransCanada stated that the eminent domain property will be used to "lay, relay,
28 operate, and maintain the pipeline and the plant and equipment reasonably
29 necessary to operate the pipeline, specifically including surveying, laying,

1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
2 reconstructing, removing and abandoning one pipeline, together with all fittings,
3 cathodic protection equipment, pipeline markers, and all their equipment and
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
5 petroleum products, and all by-products thereof.”

6 **Q: Prior to filing an eminent domain lawsuit to take your land that**
7 **TransCanada identified, do you believe they attempted to negotiate in good**
8 **faith with you?**

9 A: No, I do not.

10 **Q: Did TransCanada at any time approach you with or deliver to you their**
11 **proposed easement and right-of-way agreement?**

12 A: Yes, they did.

13 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
14 **agreement, did you understand that they would be purchasing a fee title**
15 **interest in your property or that they were taking something else?**

16 A: I understood that they proposed to have the power to take both a temporary
17 construction easement that could last for a certain period of time and then also a
18 permanent easement which they described to be 50 feet across or in width, and
19 that would run the entire portion of my property from where a proposed pipeline
20 would enter my property until where it would exit the property.

21 **Q: Is the document included with your testimony here as Attachment No. 3, a**
22 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
23 **Way agreement that they included with their condemnation lawsuit against**
24 **you?**

25 A: Yes, it is.

26 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
27 **and Right-of-Way agreement?**

28 A: Yes, I have.

1 **Q: What is your understanding of the significance of the Easement and Right-of-**
2 **Way agreement as proposed by TransCanada?**

3 **A:** My understanding is that this is the document that will govern all of the rights and
4 obligations and duties as well as the limitations of what I can and cannot do and
5 how I and any future landowner and any person I invite to come onto my property
6 must behave as well as what TransCanada is and is not responsible for and how
7 they can use my land.

8 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
9 **agreement do you have any concerns about any portions of it or any of the**
10 **language either included in the document or missing from the proposed**
11 **document?**

12 **A:** Yes, I have a number of significant concerns and worries about the document and
13 how the language included and the language not included potentially negatively
14 impacts my land and thereby potentially negatively impacts my community and
15 my state.

16 **Q: I would like you to walk the Commissioners through each and every one of**
17 **your concerns about TransCanada's proposed Easement and Right-of-Way**
18 **agreement so they can develop an understanding of how that language and**
19 **the terms of that contract, in your opinion, potentially negatively impacts you**
20 **and your land. So, if you can start at the beginning of that document and**
21 **let's work our way through it, okay?**

22 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
23 Easement and Right-of-Way agreement and how it negatively could affect my
24 property rights and my economic interests.

25 **Q: Okay, let's start with your first concern please.**

26 **A:** The very first sentence talks about consideration or how much money they will
27 pay to compensate me for all of the known and unknown affects and all of the
28 rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at
2 the signing of the easement agreement. That is a huge problem.

3 **Q: Explain to the Commissioners why that is a problem.**

4 A: It is not fair to the landowner, the county, or the State. It is not fair to the
5 landowner because they want to have my land forever for use as they see fit so
6 they can make a daily profit from their customers. If I was to lease ground from
7 my neighbor I would typically pay twice a year every year as long as they granted
8 me the rights to use their land. That only makes sense – that is fair. If I was going
9 to rent a house in town I would typically pay monthly, every month until I gave up
10 my right to use that house. By TransCanada getting out on the cheap and paying
11 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
12 revenue collection on the money I would be paid and then pay taxes on and
13 contribute to this state and this country. It is money I would be putting back into
14 my local community both spending and stimulating the local economy and
15 generating more economic activity right here. Instead TransCanada's shareholders
16 keep all that money and it never finds its way to Nebraska.

17 **Q: What is your next concern?**

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
20 limited partnership..." and I have no idea who that really is. I have no idea who is
21 forcing this pipeline on us or who the owners of the entities are, or what are the
22 assets backing this limited partnership, or who the general partner is, or who all
23 the limited partners are, and who makes up the ownership of the these partners or
24 the structure or any of the basic things you would want to know and understand if
25 you would want to do business with such an outfit. According to TransCanada's
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but
2 virtually none of the ownership and who knows if it has any other assets.

3 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
4 percent clear on exactly who could become the owner of over 275 miles of
5 Nebraska land?

6 **A:** No.

7 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
8 percent clear on exactly who will be operating and responsible for
9 approximately 275 miles of tar sands pipeline underneath and through
10 Nebraska land?

11 **A:** No.

12 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
13 and the State of Nebraska of TransCanada's easement terms.

14 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
15 called "Grantee")..." and this concerns me because it would allow my easement to
16 be transferred or sold to someone or some company or country or who knows what
17 that I don't know and who we may not want to do business with. This pipeline
18 would be a huge asset for TransCanada and if they can sell to the highest bidder
19 that could have terrible impacts upon all of Nebraska depending upon who may
20 buy it and I don't know of any safeguards in place for us or the State to veto or
21 have any say so in who may own, operate, or be responsible for this pipeline in the
22 future.

23 **Q:** Do you think that type of uncertainty and lack of control over a major piece
24 of infrastructure crossing our State is in the public interest?

25 **A:** No, certainly not, in fact, just the opposite.

26 **Q:** What's next?

27 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.
2 Perpetual to me is forever and that doesn't make sense.

3 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

4 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
5 data proving there is a perpetual supply of tar sands. I am not aware in
6 TransCanada's application where it proves there is a perpetual necessity for this
7 pipeline. My understanding of energy infrastructure like wind towers is they have
8 a decommission plan and actually take the towers down when they become
9 obsolete or no longer needed. Nothing manmade lasts forever. My land however
10 will, and I want my family or future Nebraska families to have that land as
11 undisturbed as possible and it is not in my interest or the public interest of
12 Nebraska to be forced to give up perpetual and permanent rights in the land for
13 this specific kind of pipeline project.

14 **Q: Okay, what is your next concern?**

15 A: The easement language includes all these things TransCanada can do and it says
16 "...abandoning in place..." so they can just leave this pipeline under my ground
17 until the end of time just sitting there while they are not using it, but I am still
18 prevented from doing on my land and using my land what I would like. If I owned
19 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
20 there. It doesn't make sense and it scares me and it is not in my interest or the
21 public interest of Nebraska to allow this.

22 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
23 **right?**

24 A: Yes.

25 **Q: So now on the second page of the Easement what are your concerns?**

26 A: Here the Easement identifies a 24-month deadline to complete construction of the
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period
28 starts to run from the moment "actual pipeline installation activities" begin on
29 Landowners property. It appears that TransCanada would define this phrase as

needed. It would be wise to explain what types of TransCanada action constitutes “installation activity” For instance, would the placement and storage of an excavator or other equipment on or near the Easement property be an activity or would earth have to be moved before the activity requirement is triggered. This vague phrase is likely to lead to future disputes and litigation that is not in the best interest of the welfare of Nebraska and would not protect property interests. The 24-months can also be extended in the case of “force majeure.” My understanding is that force majeure is often used to insulate a party to a contract when events occur that are completely out of their control. In TransCanada’s easement this is expanded to include “without limitation...availability of labor and materials.” Extending this language to labor and materials is problematic because these are two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of

1 this provision, you must consider the potentially extremely expensive fight a
2 Landowner would have over this question of whether or not damage was an act of
3 negligence. Putting this kind of potential liability upon the Landowner is
4 incredibly problematic and is detrimental to the protection of property rights. I
5 don't think this unilateral power which I can't do anything about as the landowner
6 is in the best economic interest of the land in question or the State of Nebraska for
7 landowners to be treated that way.

8 **Q: Is there any specific event or example you are aware of that makes this**
9 **concern more real for you?**

10 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
11 Nemaha County, Nebraska landowner farmers who accidentally struck two
12 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
13 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
14 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
15 copy of the Federal Court Complaint is here as **Attachment No. 4.**

16 **Q: What is your next concern with the Easement language?**

17 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
18 they choose unless 1) any Landowner use interferes in any way with
19 TransCanada's exercise of any of its rights within the Easement, or 2)
20 TransCanada decides to take any action on the property it deems necessary to
21 prevent injury, endangerment or interference with anything TransCanada deems
22 necessary to do on the property. Landowner is also forbidden from excavating
23 without prior authorization by TransCanada. So my understanding is that
24 TransCanada will unilaterally determine what Landowner can and can't do based
25 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
26 could also completely deny my request to excavate. Further, TransCanada retains
27 all "privileges necessary or convenient for the full use of the rights" granted to
28 them in the Easement. Again, TransCanada unilaterally can decide to the
29 detriment of the property rights of Landowner what TransCanada believes is

necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to

1 justify installing the pipeline 24 inches beneath the surface. The ability to use this
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively
3 affect Landowners property are not conducive to the protection of property rights.
4 A shallow pipeline is much more likely to become a danger and liability in the
5 future given farming operations and buried irrigation lines and other factors
6 common to the current typical agricultural uses of the land in question impacted
7 by TransCanada's preferred pipeline route.

8 **Q: What is the next concern you have with the Easement language?**

9 A: There are more vague concepts solely at the determination of TransCanada such as
10 "as nearly as practicable" and "pre-construction position" and "extent reasonably
11 possible." There is nothing here that defines this or provides a mechanism for
12 documenting or memorializing "pre-construction position" so as to minimize
13 costly legal battles or wasted Landowner time attempting to recreate the soil
14 condition on their fields or pasture. Such unilateral powers would negatively affect
15 Landowners property are not conducive to the protection of property rights or
16 economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada maintains the unilateral right to abandon the pipeline and all
19 appurtenances thereto in place on, under, across, or through Nebraska land at any
20 time it chooses. There is no provision for Landowner compensation for such
21 abandonment nor any right for the Landowner to demand removal. Such unilateral
22 powers would negatively affect Landowners property are not conducive to the
23 protection of property rights or economic interest.

24 **Q: What is the next concern you have with the Easement language?**

25 A: TransCanada has the power to unilaterally move or modify the location of any
26 Easement area whether permanent or temporary at their sole discretion.
27 Regardless, if Landowner has taken prior steps relative the their property in
28 preparation or planning of TransCanada's taking of the initial easement area(s),
29 the language here does not require TransCanada to compensate the Landowner if

1 they decide to move the easement anywhere on Landowners property. Such
2 unilateral powers would negatively affect Landowners property are not conducive
3 to the protection of property rights or economic interests.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement requires that all of the burdens and restrictions upon Landowner to
6 transfer and be applicable to any future owner of the Land in question without the
7 ability of the future Landowner to modify or negotiation any of the language in
8 question to which it will be held to comply.

9 **Q: What is the next concern you have with the Easement language?**

10 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
11 Easement to any person, company, country, etc. at their sole discretion at anytime
12 to anyone. This also means that any buyer of the easement could do the same to a
13 third buyer and so on forever. There is no change of control or sale provision in
14 place to protect the Landowner or Nebraska or to provide compensation for such
15 change of control or ownership. It is not conducive to the protection of property
16 rights or economic interests to allow unilateral unrestricted sale of the Easement
17 thereby forcing upon the Landowner and our State a new unknown Easement
18 owner.

19 **Q: What is the next concern you have with the Easement language?**

20 A: There are many terms in the Easement that are either confusing or undefined terms
21 that are without context as to whether or not the Landowner would have any say
22 so in determining what these terms mean or if the evaluation is solely in
23 TransCanada's control. Some of these vague undefined terms are as follows:

- 24 i. "pipeline installation activities"
- 25 ii. "availability of labor and materials"
- 26 iii. "commercially reasonable costs and expenses"
- 27 iv. "reasonably anticipated and foreseeable costs and expenses"
- 28 v. "yield loss damages"
- 29 vi. "diminution in the value of the property"

- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

1 **Q:** Based upon what you have shared with the Commission above regarding
2 TransCanada's proposed Easement terms and agreement, do you believe
3 those to be reasonable or just, under the circumstances of the pipeline's
4 impact upon you and your land?

5 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
6 discussed previously.

7 **Q:** Did TransCanada ever offer you financial compensation for the rights that
8 they sought to obtain in your land, and for what they sought to prevent you
9 and any future land owner of your property from doing in the future?

10 **A:** Yes, we received an offer from them.

11 **Q:** As the owner of the land in question and as the person who knows it better
12 than anyone else, do you believe that TransCanada offered you just, or fair,
13 compensation for all of what they proposed to take from you so that their tar
14 sands pipeline could be located across your property?

15 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
16 offer for all the potential impacts and effects and the rights that I'm giving up, and
17 what we will be prevented from doing in the future and how their pipeline would
18 impact my property for ever and ever.

19 **Q:** Has TransCanada at any time offered to compensate you annually, such as
20 wind farm projects do, for the existence of their potential tar sands pipeline
21 across your property.

22 **A:** No, never.

23 **Q:** At any time did TransCanada present you with or request that you, as the
24 owner of the land in question, sign and execute a document called, "Advanced
25 Release of Damage Claims and Indemnity Agreement?"

26 **A:** Yes, they did.

27 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
28 "Advanced Release of Damage Claims and Indemnity Agreement?"

29 **A:** Yes, it is.

1 **Q: What was your understanding of that document?**
2 A: When I read that document in the plain language of that document, it was my
3 understanding that TransCanada was attempting to pay me a very small amount at
4 that time in order for me to agree to give up my rights to be compensated from
5 them in the future related to any damage or impact they may have upon my
6 property “arising out of, in connection with, or alleged to resulted from
7 construction or surveying over, under or on” my land.
8 **Q: Did you ever sign that document?**
9 A: No, I did not.
10 **Q: Why not?**
11 A: Because I do not believe that it is fair or just to try to get me to agree to a small
12 sum of money when I have no idea how bad the impacts or damages that they, or
13 their contractors, or subcontractors, or other agents or employees, may cause on
14 my land at any time in the future that resulted from the construction or surveying
15 or their activities upon my land.
16 **Q: When you reviewed this document, what did it make you feel?**
17 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
18 shield themselves against known and foreseeable impacts that their pipeline, and
19 the construction of it, would have upon my land. It made me feel that they knew it
20 was in their financial interest to pay me as little as possible to prevent me from
21 ever having the opportunity to seek fair compensation again, and that this must be
22 based upon their experience of unhappy landowners and situations in other places
23 where they have built pipelines.
24 **Q: Has TransCanada ever contacted you and specifically asked you if you**
25 **thought their proposed location of their proposed pipeline across your land**
26 **was in your best interest?**
27 A: No, they have not.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in the public interest of the State of Nebraska?

4 A: No, they have not.

5 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
6 Takings Clause?

7 A: Yes, I am.

8 Q: What is your understanding of the Fifth Amendment as it relates to taking of
9 an American citizens property?

10 A: My understanding is that, according to the United States Constitution, that if the
11 government is going to take land for public use, then in that case, or by taking for
12 public use, it can only occur if the private land owner is compensated justly, or
13 fairly.

14 Q: Has TransCanada ever contacted you specially to explain the way in which
15 the public could use its proposed Keystone XL Pipeline?

16 A: No, they have not.

17 Q: Can you think of any way in which the public, that is the citizens of the State
18 of Nebraska, can directly use the proposed TransCanada Keystone XL
19 Pipeline, as it dissects the State of Nebraska?

20 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
21 public benefits from this pipeline in any way, how they can use it any way, or how
22 it's in the public interest in any way. By looking at the map, it is quite clear to me
23 that the only reason it's proposed to come through Nebraska, is that because we
24 are geographically in the way from between where the privately-owned Tar Sands
25 are located to where TransCanada wants to ship the Tar Sands to refineries in
26 Houston, Texas.

27 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
28 crude petroleum, or oil and petroleum by-products that you would like to
29 ship in its pipeline?

1 A: No, it has not.

2 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
3 products that you, at this time or any time in the future, would desire to place
4 for transport within the proposed TransCanada Keystone XL Pipeline?

5 A: No, I do not.

6 Q: Do you know anyone in the state of Nebraska who would be able to ship any
7 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
8 products within the proposed TransCanada Keystone XL Pipeline?

9 A: No, I do not. I've never heard of such a person or company like that.

10 Q: Do you pay property taxes for the land that would be affected and impacted
11 at the proposed TransCanada Keystone XL Pipeline?

12 A: Yes, I do.

13 Q: Why do you pay property taxes on that land?

14 A: Because that is the law. The law requires us to pay the property taxes as the owner
15 of that property.

16 Q: Because you follow the law and pay property taxes, do you believe you
17 deserve any special consideration or treatment apart from any other person
18 or company that pays property taxes?

19 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
20 just what you do.

21 Q: Do you believe the fact that you pay property taxes entitles you to special
22 treatment of any kind, or special rights of any kind?

23 A: No, of course not.

24 Q: Do you believe the fact that you pay property taxes on your land would be
25 enough to qualify you to have the power of eminent domain to take land of
26 your neighbors or other people in your county, or other people across the
27 state of Nebraska?

28 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
29 I expect an award for or any type of special consideration.

1 **Q: Have you at any time ever employed any person other than yourself?**

2 A: Well, yes I have.

3 **Q: Do you believe that the fact that you have, at some point in your life,**
4 **employed one or more other persons entitle you to any special treatment or**
5 **consideration above and beyond any other Nebraskan that has also employed**
6 **one or more persons?**

7 A: No, of course not.

8 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
9 **have at one point employed another person within this state, entitles you to**
10 **preferential treatment or consideration of any kind?**

11 A: No, of course not. If I choose to employ someone that decision is up to me. I
12 don't deserve any special treatment or consideration for that fact.

13 **Q: At the beginning of your statement, you briefly described your property that**
14 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
15 **give the Commissioners a sense of specifically how you believe the proposed**
16 **Keystone XL Pipeline and its preferred route, which proposes to go across**
17 **your land, how it would in your opinion based on your knowledge,**
18 **experience, and background of your land, affect it. So please share with the**
19 **Commissioners the characteristics of your land that you believe is important**
20 **for them to understand, while they evaluate TransCanada's application for a**
21 **route for its proposed pipeline to cross Nebraska and across your land,**
22 **specifically.**

23 A: I have included this answer in my attached documents.

24 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
25 **crude oil pipeline in its preferred location, or ultimate location across the**
26 **state of Nebraska?**

27 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
28 or even bullied around and being made to feel scared that they did not have any
29 options but to sign whatever papers TransCanada told them they had to. I am

1 aware of folks being threatened that their land would be taken if they didn't follow
2 what TransCanada was saying. I am aware of tactics to get people to sign
3 easements that I don't believe have any place in Nebraska or anywhere such as
4 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
5 landowners and convince them they should sign TransCanada's easement
6 agreements. I am aware of older folks and widows or widowers feeling they had
7 no choice but to sign TransCanada's Easement and they didn't know they could
8 fight or stand up for themselves. From a more practical standpoint, I am worried
9 that according to their answer to our Interrogatory No. 211, TransCanada only
10 owns and operates one (1) major oil pipeline. They simply do not have the
11 experience with this type of pipeline and that scares me. There are others but that
12 is what I can recollect at this time and if I remember more or my recollection is
13 refreshed I will share those with the Commissioners at the Hearing in August.

14 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
15 **landowner is reasonable or just?**

16 **A:** No, I do not.

17 **Q: Do you have any concern about limitations that the construction of this**
18 **proposed pipeline across your affected land would prevent construction of**
19 **future structures upon the portion of your land affected by the proposed**
20 **easement and immediately surrounding areas?**

21 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
22 structures directly across or touching the easement, and it would be unwise and I
23 would be uncomfortable to build anything near the easement for fear of being
24 blamed in the future should any damage or difficulty result on my property in
25 regards to the pipeline.

26 **Q: Do you think such a restriction would impact you economically?**

27 **A:** Well yes, of course.

28 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
26 construction and/or maintenance and operation. I am concerned about spills and
27 leaks that TransCanada has had in the past and will have in the future. This could
28 be catastrophic to my operations or others and to my county and the State. A 2½%

detection level for spills is inadequate-a ridiculous safeguard for a pipeline of this magnitude. More concerns are in my attached documents.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of my land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of your land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over your land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the groundwater of not only under my land, but also near and surrounding the pipeline route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
7 **testimony?**

8 **A:** Yes, I have.

9 **Q: Where have you seen that before?**

10 **A:** That is a map I think I first saw a couple years ago that shows the Keystone XL
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
12 believe the portion of the alternative route in Nebraska essentially twins or
13 parallels Keystone I.

14 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
15 **Application, and as found on Attachment No. 7, here to your testimony, is in**
16 **the public interest of Nebraska?**

17 **A:** No, I do not.

18 **Q: Do you believe that the Keystone mainline alternative route as shown on**
19 **Attachment No. 7 included with your testimony here is a major oil pipeline**
20 **route that is in the public interest of Nebraska?**

21 **A:** No, I do not.

22 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
23 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
24 **your testimony, is in the public interest of Nebraska?**

25 **A:** No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 **A:** No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that its preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with from TransCanada’s own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to our Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
23 **like the Public Service Commissioners to consider in their review of**
24 **TransCanada's Application?**

25 A: No, I have not. I have shared that which I can think of as of the date I signed this
26 document below but other things may come to me or my memory may be
27 refreshed and I will add and address those things at the time of the Hearing in
28 August and address any additional items at that time as is necessary. Additionally,
29 I have not had an adequate amount of time to receive and review all of

1 TransCanada's answers to our discovery and the discovery of others so it was
2 impossible to competently and completely react to that in my testimony here and I
3 reserve the right to also address anything related to discovery that has not yet
4 concluded as of the date I signed this document below. Lastly, certain documents
5 requested have not yet been produced by TransCanada and therefore I may have
6 additional thoughts on those I will also share at the hearing as needed.

7 **Q: What is it that you are requesting the Public Service Commissioners do in**
8 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
9 **across Nebraska?**

10 A: I am respectfully and humbly requesting that the Commissioners think far beyond
11 a temporary job spike that this project may bring to a few counties and beyond the
12 relatively small amount of taxes this proposed foreign pipeline would possibly
13 generate. And, instead think about the perpetual and forever impacts of this
14 pipeline as it would have on the landowners specifically, first and foremost, but
15 also thereby upon the entire state of Nebraska, and to determine that neither the
16 preferred route nor the Keystone mainline alternative route are in the public
17 interest of the citizens of the state of Nebraska.

18 **Q: Does Attachment No. 8 here contain other documents you are competent to**
19 **speak about that you wish to be part of your testimony and to discuss in more**
20 **detail as needed at the August 2017 Hearing?**

21 A: Yes.

22 **Q: Are all of your statements in your testimony provided above true and**
23 **accurate as of the date you signed this document to the best of your**
24 **knowledge?**

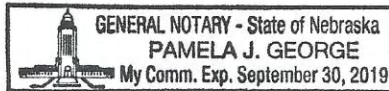
25 A: Yes, they are.

26 **Q: Thank you, I have no further questions at this time and reserve the right to**
27 **ask you additional questions at the August 2017 Hearing.**

William F. Dunavan
William Dunavan

Subscribed and Sworn to me before this 24th day of May, 2017.

Pamela J. George
Notary Public



Attachment 8.2

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W ½ SE ¼ 6-9-2 YORK COUNTY, NEBRASKA

1. **DESTRUCTION OF NATIVE PRAIRIE:** We have some of the last surviving Native Prairie in York County, Nebraska. When we called the County Assessor years ago at the start of the Keystone XL controversy and asked how much native prairie there was in York County, we were told they did not know there was any. In the Draft Environmental Impact Statement 3.5.2.1 it states, "Native grasslands or prairies are among the most threatened native vegetation communities in the United States". TransCanada's brochures promised to **"RESTORE"** lands impacted by this project. Our easements and the EIS mention the terms **"RESEED, REVEGETATE, RESESTABLISH and RECLAIM** interchangeably. None of these terms define **"RESTORE"**. We have over 15 species grass and over 90 species of flowers, forbs and herbs. The EIS Construction/Reclamation Plan for Tall Grass Prairie lists only 6 varieties of grass that will be provided. **This is NOT RESTORATION.** Also the Draft Report for the Nebraska Department of Environmental Quality mentions that "Less than 2% of seed was available or could be obtained in the future from local ecotypes...without availability of local ecotype seed, restoration would be extremely difficult if not impossible".
2. **MANY WELLS NOT DOCUMENTED:** The Keystone Mapping Project has documented wells listed in the Environmental Impact Statement. Looking at the map we saw that our two wells were not identified and neither were our neighbor's wells. If this is the case along the proposed route, there must be innumerable wells that are not documented.
3. **DO WE REALLY CONTINUE TO OWN OUR PROPERTY?** TransCanada states that despite their easements, the property owners will still own their land and can continue to use it. In our case, the diagonal cutting through our property would allow TransCanada to control our land use. Our property has a perfect dam site that we have intended to utilize and we have been told that "Grantor shall not...construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization". This gives control of our entire property to a foreign corporation. An easement of 4-6 acres across takes away control of our entire 80 acre parcel. There shall be no water conservation dam, nor a modern underground cattle watering system, etc.
4. **WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?** With oil at or below \$50.00 a barrel and the cost of tar sands extraction needing to be \$80.00 or above to even break even, what is the real motive of this pipeline going over the aquifer? During a Natural Resources Committee hearing on February 9, 2011, Jim Krause, operations director for TransCanada stated "if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product...or maybe by that time in the future, water".
5. **INSURANCE:** Purchasing a \$20,000,000 liability policy annually by a landowner cannot be afforded without continual rents, royalties, percentages, residual payments, etc. The landowner is stuck with a one-time payment and a perpetual liability.

6. PERPETUAL EASEMENT: The easements offered by TransCanada are **FOREVER**. Even for a \pm 50 year project. This should never be allowed.
7. TAXES: The landowner must forever pay property tax on land taken by the easement.
8. SUBCONTRACTORS: All of TransCanada's work seems to be done by subcontractors. We have grave concerns over the supervision of these contractors. With everything being subcontracted, TransCanada does not need to be responsible, need to answer to anyone and there seem to be no penalties, consequences or fines if something is not done correctly.
9. LANDOWNER AGREEMENTS: All of the 7 easement offers we have had do not cover all of our concerns. TransCanada can promise us the world...they can promise they will follow the EIS and the 57 Special Conditions they have agreed to, but if these are not specifically outlined in our easements, there is no way they can actually be enforced and are nothing more than mere suggestions.
10. THREATS TO CONDEMN WITHOUT A PERMIT: Most people enjoy seeing FedEx come up their driveway...not anymore.
11. REALIZING THAT TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

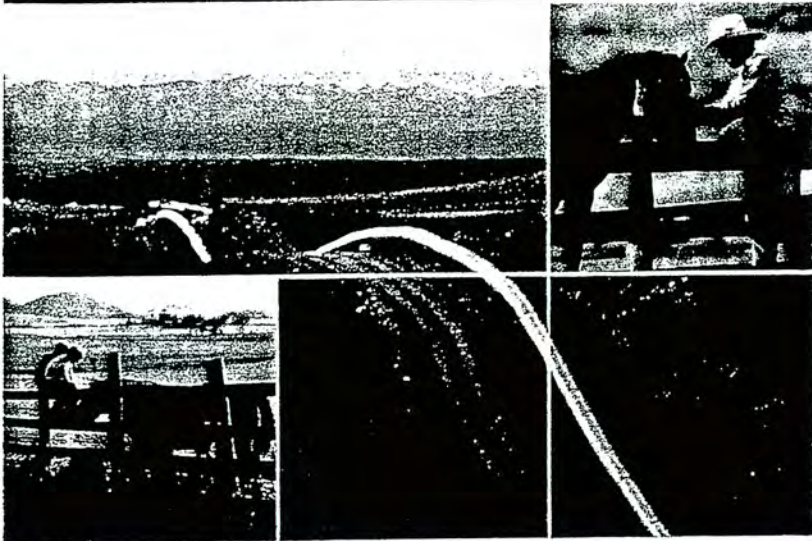
W1/2 se ¼ 6-9-2 YORK COUNTY NEBRASKA

EVIDENCE

1. DESTRUCTION OF NATIVE PRAIRIE:
 - a. TransCanada Brochure stating they will "restore" Prairie
 - b. Plant listing from our property
 - c. Trow Engineering stating they were hired for "Reclamation" survey, not "Restoration"
 - d. Photos of plants on our property can be made available
2. MANY WELLS NOT DOCUMENTED:
 - a. Nebraska Department of Natural Resources list of wells with GPS
 - b. Overlay from local platt book showing numerous residences all with wells, some with cattle windmills all left off report
 - c. Copy of map with DNR wells, made by "Keystone XL Mapping Project"
3. DO WE REALLY CONTINUE TO OWN OUR PROPERTY?:
 - a. Easement language prohibiting dam construction, digging, etc.
4. WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?
 - a. Copy of Business Card of Jim Krause
 - b. Natural Resources Committee Hearing 2-9-2011 with statement of Krause
 - c. Reference to Beck Plan R.W. Beck and Assoc. 1967 for Missouri River Basin
5. INSURANCE:
 - a. No documentation other than current property liability policy. Need bid from Insurance Company for \$20 million policy
6. PERPETUAL EASEMENT:
 - a. See Easement language
7. TAXES:
8. SUBCONTRACTORS:
 - a. Business card of TransCanada spokesman Jeff Rauh.
 - b. Personal observation of Bill Dunavan and others that surveyor's vehicles were inscribed with "International Pegasus" on their doors.
9. LANDOWNER AGREEMENT:
 - a. See Easement (s) Language
 - b. Only terms written into easements can be enforced
10. THREATS TO CONDEMN WITHOUT A PERMIT:
 - a. Copy of Letter from TransCanada dated: 7-21-2010
 - b. Copy of Letter from TransCanada dated: 4-7-2011
 - c. Copy of Letter to Atty. General Bruning and Attorney General's Office Reply dated 8-12-10 and 9-30-10 respectively.
11. REALIZING TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:
 - a. Copy from front page of Lincoln Journal Star with photo of TransCanada explaining the destination of their KXL products 9-4-2011.
12. OTHER EVIDENCE:
 - a. "Cornhusker Economics" Newsletter 2-9-2011 Conclusion, " Considering the potential benefits and costs alluded to above, we do not support the project...supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks." Richard K. Perrin, Dr. Lilyan Fulginiti, Department of Agricultural Economics.
 - b. 30+ Binders full of well documented information at Susan Dunavan's Office.
 - c. Dunavan Family Photo

Attachment 8.3

What Landowners Can Expect



- We will negotiate in good faith for land rights needed for the Keystone XL project. Fair value will be paid for land rights.
- In more than 50 years of building and operating its pipeline system TransCanada has used eminent domain or right-of-entry procedures very sparingly. We are committed to extending that positive record.
- We will work cooperatively with individual landowners to identify and address issues of crop loss, construction impacts and plans to bring land back to an equivalent productivity capability.
- The Keystone XL Pipeline project will be designed, constructed, operated and maintained in a manner that minimizes impact on landowners and the environment.

Keystone XL Pipeline Project

We are committed to treating all landowners who may be affected by the Keystone XL Pipeline honestly, fairly and respectfully. We recognize that construction of a pipeline on or near land you own raises many questions; it is important that you understand what we are proposing and how you can participate in the process.

The preliminary Keystone XL Pipeline route is based on an analysis of land use, topography and environmental data. Refinements to the route have been – and will be – made based on feedback from landowners, communities and agencies reviewing the proposal, as well as our own detailed environmental and engineering analysis of the route. Even as Keystone XL acquires right-of-way for the pipeline, we will strive to understand and address landowner and community concerns.

Guiding Principles for Landowner Relations

- We seek to develop positive relationships with landowners through open communication, honesty, fairness and mutual respect.
- We plan to keep potentially impacted landowners informed of the project status on an ongoing basis throughout all phases of the project.

About Pipeline Easements:

- A right-of-way easement, negotiated in good faith between the landowner and the pipeline company, would grant Keystone XL the right to construct, operate, and maintain the pipeline. It specifies an easement width within which certain activities are restricted or prohibited, with the primary goal of keeping the pipeline safe. For example, while buildings and excavation are not allowed in the right-of-way, normal farming and cultivation practices are not restricted.
- Canada, the permanent right-of-way width for Keystone XL is generally 20 metres (66 feet) – 10 metres (32 feet) on either side of the pipeline. In addition to the permanent easement lands, temporary working space will be required for the construction phase of the project which will consist of generally 10 metres of additional space

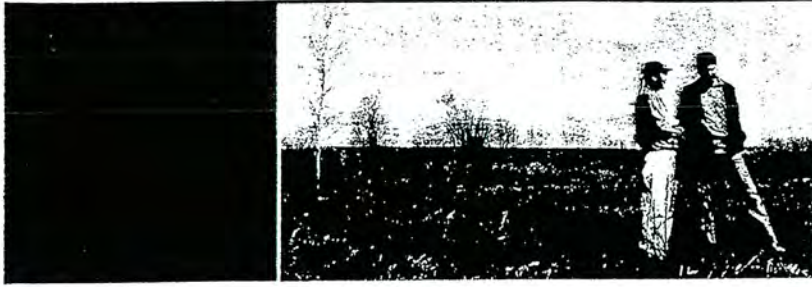
The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



1. Destruction of Native Prairie

a. TransCanada Brochure saying they will "restore" Prairie

What Landowners Can Expect



- In the US, the permanent right-of-way easements will be 50 feet (15 meters) wide, with an additional 60 feet (18 metres) of temporary workspace.
- In Canada and the U.S., additional temporary work space may also be required for road crossings and other unique construction features.
- Keystone XL will work with landowners on specific issues such as crop losses, timber, drainage and irrigation systems, wells, fences, equipment, improvements, and other potential construction impacts in order to return the land to full productivity.
- There are no restrictions for crossing the right-of-way with normal farming equipment. If it is necessary for unusually heavy equipment to cross the right-of-way or to excavate near the right-of-way, we request that the pipeline company be contacted in advance to ensure the safety of landowners, work crews and the pipeline itself.
- The easement document and rights run with the land and are not impacted by changes in land ownership.
- Keystone XL will reclaim disturbed land and return it to its equivalent productivity.
- Keystone XL will be responsible for any taxes assessed against the pipeline. Responsibility for property taxes remains with the landowner.
- It is important that landowners read easement agreements carefully and understand the information they contain.

Next Steps

- Keystone XL will seek to acquire rights from landowners to build, operate and maintain the pipeline, will compensate for construction losses and inconvenience and will restore the land impacted by construction activities.
- The Keystone XL pipeline is proposed to be buried with a minimum of 1.2 metres (4 feet of cover), except in site-specific areas, such as consolidated rock, in which case the pipeline will be buried with at least 0.9 metres (3 feet) of cover.

- Keystone XL is responsible for repair of drain tiles, irrigation, or other buried utilities if damaged during Keystone XL construction.
- Keystone XL will seek to minimize road impact and will be responsible for repair of all impacted roads after construction.

If at any time you have questions about the easement process, we encourage you to contact your local Keystone XL land agent or the Keystone XL Project Office.

Contact

For more information, please call our toll free project number (1.866.717.7473) or use our project-specific email address keystone@transcanada.com

Landowner Inquiries

Canada (toll free) 1.866.412.5263

U.S. (toll free) 1.866.585.7063

Alternatively, you can refer to our website at www.transcanada.com/keystone/kxl or write, attention to:

In Canada

TransCanada Keystone XL Project Team
450 – 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

In the U.S.

TransCanada Keystone XL Project Team
7505 NW Tiffany Springs Parkway
Northpointe Circle II Suite 400
Kansas City, MO 64153

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



Attachment 8.6

Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
33685	78	4	Irrigation	40.298858	-97.128610
55201	85	4	Irrigation	40.302412	-97.165644
27339	94	4	Irrigation	40.302455	-97.156787
167639	100	4	Domestic	40.305444	-97.157083
37347	104	4	Irrigation	40.306886	-97.151301
152036	106	4	Irrigation	40.309528	-97.184639
111927	108	4	Irrigation	40.309665	-97.146575
36153	136	4	Irrigation	40.316823	-97.175042
31236	52	5	Irrigation	40.316745	-97.150734
111584	0	5	Irrigation	40.318676	-97.182170
152485	26	5	Domestic	40.320694	-97.170504
74892	31	5	Irrigation	40.324180	-97.194023
74893	32	5	Irrigation	40.324125	-97.184554
117460	34	5	Irrigation	40.324079	-97.176563
171179	35	5	Irrigation	40.327972	-97.203444
25153	36	5	Irrigation	40.329153	-97.156161
5826	36	5	Irrigation	40.331427	-97.194005
120967	38	5	Irrigation	40.331205	-97.170333
201131	40	5	Domestic	40.336000	-97.189639
68097	42	5	Irrigation	40.338831	-97.212793
189303	46	5	Irrigation	40.338694	-97.194111
150524	52	5	Irrigation	40.340173	-97.165520
125535	53	5	Domestic	40.340241	-97.166201
4507	64	5	Irrigation	40.342523	-97.168948
63338	64	5	Irrigation	40.344116	-97.196278
64323	64	5	Irrigation	40.345982	-97.203272
7765	65	5	Irrigation	40.347619	-97.178951
34246	80	5	Irrigation	40.349683	-97.196142
191554	80	5	Domestic	40.349556	-97.184611
170166	123	5	Irrigation	40.350066	-97.193235
37708	26	6	Irrigation	40.351722	-97.209741
92721	27	6	Domestic	40.353060	-97.179226
96294	28	6	Irrigation	40.353681	-97.202636
7422	30	6	Irrigation	40.355338	-97.219279
197624	30	6	Irrigation	40.357028	-97.183944
72376	32	6	Irrigation	40.358976	-97.228781
54795	33	6	Irrigation	40.358919	-97.186011
80753	35	6	Irrigation	40.360766	-97.212270
100286	35	6	Irrigation	40.360772	-97.193112
10797	36	6	Irrigation	40.362607	-97.200269
37264	37	6	Irrigation	40.368204	-97.236823
58027	38	6	Irrigation	40.368046	-97.221699
191450	39	6	Irrigation	40.367805	-97.198362
32985	40	6	Irrigation	40.369174	-97.213108
54516	40	6	Irrigation	40.369784	-97.195398
71159	40	6	Irrigation	40.373502	-97.228776
204381	42	6	Irrigation	40.375444	-97.211694
32682	44	6	Irrigation	40.379233	-97.220457
76356	44	6	Irrigation	40.380709	-97.219280

2.Many Wells Not Documented

- a. Nebraska Dept. of Natural Resources list of wells with GPS

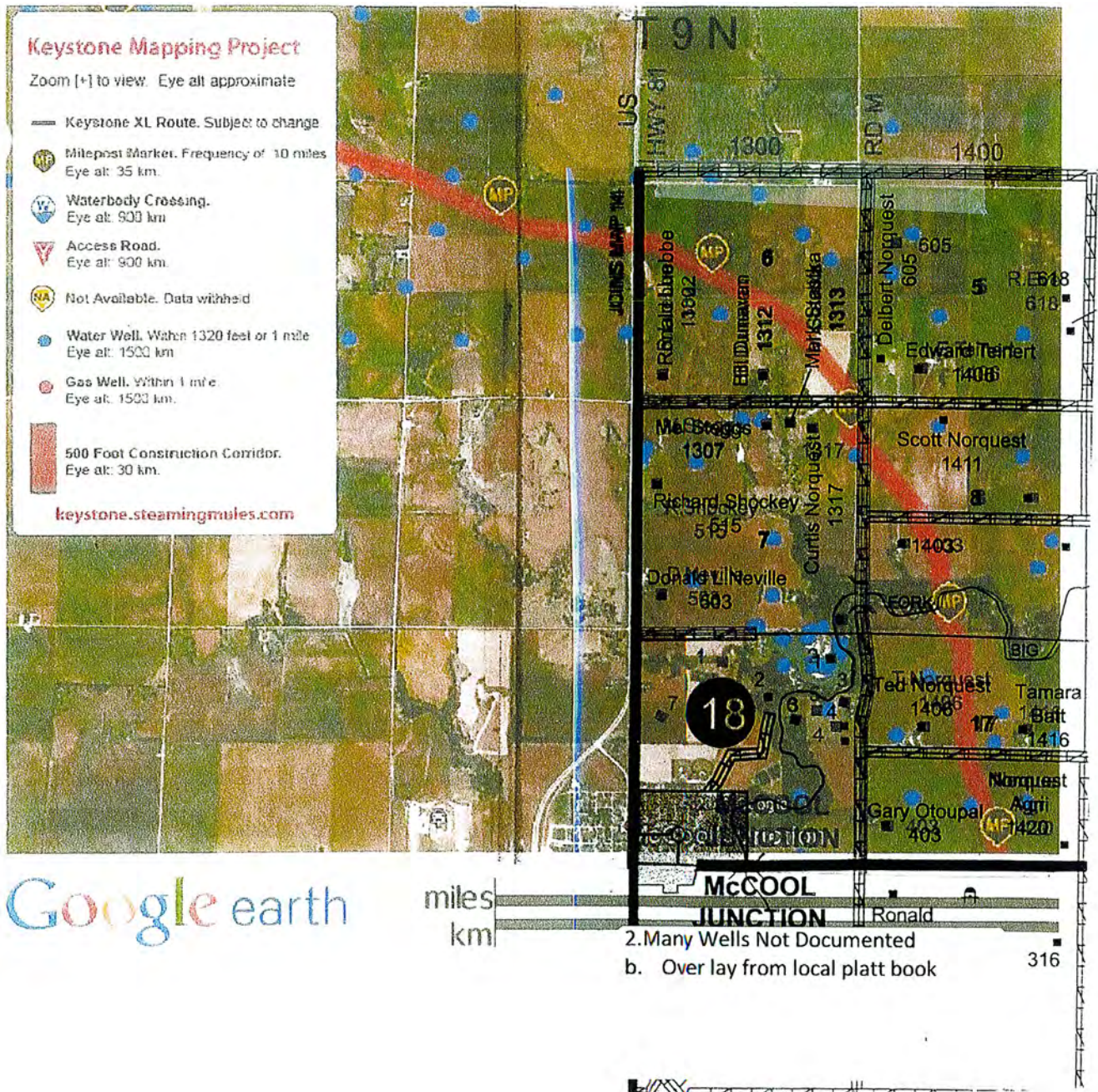
Available Water Well Data within One Mile of the Centerline in Nebraska

Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
197482	45	6	Domestic	40.392917	-97.234889
146020	48	6	Domestic	40.394000	-97.231333
166811	49	6	Domestic	40.408439	-97.219041
133782	50	6	Domestic	40.414308	-97.231213
164535	51	6	Domestic	40.433108	-97.293222
172076	53	6	Domestic	40.434388	-97.281194
93213	54	6	Domestic	40.464275	-97.293027
128865	57	6	Domestic	40.474502	-97.311259
74110	58	6	Irrigation	40.529867	-97.366267
63850	60	6	Irrigation	40.538703	-97.349358
43322	65	6	Irrigation	40.541074	-97.394679
83358	70	6	Irrigation	40.542530	-97.382780
33882	80	6	Irrigation	40.542440	-97.353237
32152	102	6	Irrigation	40.546043	-97.391162
83466	104	6	Irrigation	40.546417	-97.382964
60669	121	6	Irrigation	40.548511	-97.386756
124335	147	6	Irrigation	40.549736	-97.392320
171143	24	7	Irrigation	40.549322	-97.372272
35350	33	7	Domestic	40.549756	-97.386508
19317	37	7	Irrigation	40.549861	-97.381900
72588	37	7	Irrigation	40.549914	-97.376283
42353	38	7	Irrigation	40.550651	-97.400601
73978	38	7	Irrigation	40.553429	-97.401758
69809	39	7	Irrigation	40.553459	-97.363763
82123	39	7	Irrigation	40.553942	-97.373264
204484	39	7	Domestic	40.558383	-97.404200
119455	39	7	Irrigation	40.564295	-97.402032
104461	40	7	Irrigation	40.564252	-97.392373
205091	40	7	Domestic	40.566833	-97.395611
206175	40	7	Domestic	40.566778	-97.381000
28045	40	7	Irrigation	40.567753	-97.389931
155976	40	7	Irrigation	40.571576	-97.411245
136865	41	7	Irrigation	40.571389	-97.382927
91267	41	7	Domestic	40.573375	-97.420789
60670	41	7	Irrigation	40.574897	-97.401514
36247	43	7	Irrigation	40.574970	-97.394923
118764	44	7	Irrigation	40.578726	-97.420706
61349	44	7	Irrigation	40.578755	-97.411259
19318	48	7	Irrigation	40.578881	-97.404526
139100	50	7	Irrigation	40.578850	-97.401825
136198	50	7	Irrigation	40.578777	-97.382794
72309	50	7	Irrigation	40.580493	-97.389909
14131	50	7	Irrigation	40.582412	-97.416114
59362	52	7	Irrigation	40.583077	-97.401601
66636	53	7	Irrigation	40.584234	-97.408880
40831	53	7	Irrigation	40.586058	-97.429049
147804	60	7	Irrigation	40.589764	-97.439831
146043	60	7	Irrigation	40.593523	-97.444820
64500	63	7	Irrigation	40.593318	-97.430182

Source DNR, 2011. Available @ <http://dhrdata.dnr.ne.gov/wellsccs/menu.aspx>

2.Many Wells Not Documented

c. Copy of map with DNR wells made by Keystone XL Mapping Project



Attachment 8.7

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Natural Resources Committee
February 09, 2011

JIM KRAUSE: Twenty years. [LB340 LB578 LB629]

SENATOR SMITH: And that contract, of course, would begin the day that they would begin to receive or have they already begun to receive? [LB340 LB578 LB629]

JIM KRAUSE: It's once the people on the far end start to receive the oil, as they have already been doing since June on the first phase of the Keystone pipeline. [LB340 LB578 LB629]

SENATOR SMITH: One year, one year into it at this point. [LB340 LB578 LB629]

JIM KRAUSE: Yeah. Yep. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you're in operations, actually how much does this oil heat up because of friction? [LB340 LB578 LB629]

JIM KRAUSE: That's a great question that has been going around a number of times, and as stated earlier in this committee, we provide no heat to the pipe. But you're correct, the pipe does heat up from the friction not only from the pumps, but from the pipe itself. Ultimately, the oil of...the temperature of the pipe and the oil is governed mainly by ground temperature. That has a huge impact on the temperature of the oil. So as the oil comes up to a pump station, it can be very close to what the current ground temperature is four feet below ground. As it exits the station, some of that pumping will heat it up a bit, but it's not like it gets really, really hot and changes the viscosity to a great amount. [LB340 LB578 LB629]

SENATOR HAAR: Now you may not be the person to answer this one, maybe the next person, but if there is decommissioning for whatever purpose, who pays for that and

how are we guaranteed, for example, the landowners? [LB340 LB578 LB629]

JIM KRAUSE: Sure. It's an excellent question and it has come up a few times here.

There will be some testimony later that will cover that in detail, but, again, my background and knowledge of this is we're required through a permitting process through PHMSA, the Department of Transportation, we are held liable for reclamation and restoration of any abandoned pipeline. In technical terms, what that would mean, if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product to go through that pipe, let's say gasoline, or maybe by that time in the future, water, then the pipeline needs to be...follow very stringent processes to be taken out of service. Cleaning pigs squeal down the pipeline and remove whatever oil is in the pipe. And then further pigs goes down and clean whatever residue is in there. And then, essentially, the pipe is closed at each end and the inert gas, such as nitrogen, is put into the pipe. The cathodic protection systems on the pipe continue to have the function, by law, to ensure the pipe doesn't corrode. And the nitrogen inside makes sure there's no internal corrosion taking place as well. [LB340 LB578 LB629]

SENATOR HAAR: So, but if some point, because everything eventually wears out, I mean, pipeline will last a lot longer than I will, but if it collapses at some point after it is decommissioned, how...who takes care of that? [LB340 LB578 LB629]

JIM KRAUSE: The owner of the pipeline which is us. [LB340 LB578 LB629]

SENATOR HAAR: And if you're no longer the owner? [LB340 LB578 LB629]

JIM KRAUSE: Whoever takes ownership from us would have to carry on that liability. [LB340 LB578 LB629]

SENATOR HAAR: And if it's abandoned and just, you know, goes through bankruptcy or something, I still...at the end you could come up with someone with a situation where

Attachment 8.10

9. Landowner Agreement
b. Only terms written into easements
can be enforced

1.56.1: Regarding Mitigation Commitments and Landowner Agreements, in the Draft Report the NDEQ “encourages Keystone to negotiate mutually acceptable agreements with adversely affected landowners to address potential construction and restoration issues.” The Nebraska Draft Evaluation Report, October 2012, Chapter 2 Project Description Overview Section 2.2.1 Right-of way Acquisition Process states:

To construct, operate, and maintain the proposed Nebraska Reroute, Keystone would negotiate easement agreements with landowners along the route. The easement agreements would list the conditions to which the landowners and Keystone both agree, including financial compensation to the landowners in return for granting easements. Compensation would also be made for loss of use during construction, crop loss, loss of nonrenewable or other resources, restrictions on future use of the land, and restoration of any unavoidable damage to personal property during construction. Easement negotiations and final agreements are private business concerns between the landowners and Keystone, and neither DOS nor NDEQ has legal authority or ability to intervene in the proceedings or enforce the conditions of an easement agreement. In most cases, agreements would allow the agricultural uses currently in place to continue within the permanent ROW after pipeline installation.

Attachment 8.11

10. Threats to Condemn without a Permit

a. Letter from TransCanada 7-21-10



July 21, 2010

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owner:

You by now are aware that TransCanada Keystone Pipeline L.P. ("Keystone") is constructing and will operate a 1,833 mile crude oil pipeline, which will begin in Canada and will cross through approximately 1,073 miles of property in the United States, including Nebraska. As you know, the path of the pipeline will cross a portion of your property.

In order to construct the pipeline, Keystone must acquire a permanent and temporary easement over your property. It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

The description of the proposed permanent and temporary easements is described in the enclosed form of easement and its attachments.

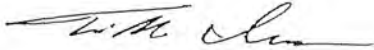
As consideration for granting Keystone these easements, TransCanada is offering you the total sum of _____. This sum includes _____ for the permanent easement, which represents 100% of the total fee value for the permanent easement, despite the fact the permanent easement encompasses significantly less property rights than the total fee. Additionally, the amount includes _____ for the temporary easement which is based upon a rental value of 50% of the fee value per year. Finally, Keystone will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

This letter is Keystone's final offer, and it will remain open for one month after the date of this letter or until you reject it. We believe the amount of the offer is a premium price for your property. Keystone's offer is high because the company prefers to acquire this property through negotiation and to avoid litigation and its associated delays and risks. In order to accept this offer, please have the authorized person(s) execute two original Easement and Right of Way forms before a notary public and return them to me in the enclosed postage pre-paid envelope before the expiration of the one month period. Also enclosed is a W-9 tax form that needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents.

While we hope to acquire this property through negotiation, if we are unable to do so, we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period. In the event that we are forced to invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons", with a stylized flourish at the end.

Tim M. Irons
Senior Land Coordinator
TransCanada Keystone Pipeline, L.P.
717 Texas Street
Suite 24215
Houston, TX 7702-2761

Encl.

Attachment 8.12



April 7, 2011

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owners:

The proposed route of a crude oil pipeline, known as Keystone XL, crosses a portion of your property in Nebraska. The project, proposed by Delaware-based TransCanada Keystone Pipeline L.P., responds to U.S. demand for crude oil from refineries seeking a secure and stable supply. The project seeks to create a land-based link between this U.S. demand and growing oil supplies in Canada and in the northern Great Plains states. Oil delivered would reduce the need for imports from Venezuela or the Middle East, significantly improving U.S. energy security.

The federal regulatory review of this proposed project continues and we expect a decision from the federal government in the first half of 2011. To construct the project, we must acquire permanent and temporary easements, and possibly other pipeline and construction related land rights, through the area where this project will be constructed in Canada and in the U.S., including in Nebraska.

Permanent easements provide Keystone limited rights to construct, operate, and maintain the pipeline. Landowners retain all rights of ownership and productive use of the easement area with only those restrictions that ensure the continued integrity and safety of the pipeline. In addition, temporary easements, which are in place only until construction and reclamation are completed, support the construction activities on the permanent easement.

To construct the pipeline, we must acquire a permanent and temporary easement over your property. The proposed permanent easement and temporary easement is described in the enclosed form of easement and its attachments.

It is our strong preference to negotiate a voluntary easement acquisition with each property owner. We have been working with Nebraska landowners since 2008 to understand how best to minimize the impact of this project on individual properties and operations. This process can include multiple visits to the land to address specific routing issues as well as provisions to minimize impacts associated with the construction process. You are receiving this letter because our discussions and negotiations are not progressing to a voluntary settlement in a timely manner.

In such circumstances, property laws in Nebraska and most other jurisdictions allow proponents of projects that are in the broader public interest to use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

It is important to point out that in addition to the easement itself, Keystone's work on your land and the pipeline itself must be in compliance with applicable state and federal rules and regulations. In particular, throughout its route in the U.S., the safe operation of this pipeline is governed by the U.S. Department of Transportation. These requirements include measures required to ensure safety when the pipeline is operating and if it is shut down. Construction methods and techniques are spelled out in detail in the Construction Mitigation and Reclamation Plan, a copy of which you should have received as a part of the Draft Environmental Impact Statement issued by federal agencies reviewing this project (and available on the U.S. Department of State project web site at www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open under "Project Documents"). Additional requirements related to construction may be added as regulatory reviews continue to proceed.

As consideration for granting these easements, we are offering you the total sum of This sum includes for the permanent easement, which is based on 100 per cent of the current, unit fee value (i.e. dollars per acre as determined by an independent market assessment) of similar land in your region, despite the fact the permanent easement grants us significantly fewer property rights than outright ownership. Additionally, the amount includes or the temporary easement which is a rental value based on 50 per cent of the assessed unit fee value. Finally, we will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

We prefer to acquire this property through negotiation and voluntary settlement. We will initiate eminent domain only as a last resort, where good faith efforts have not resulted in a voluntary agreement. Even after initiating this process, we will continue to work to reach a voluntary agreement.

This letter represents our final offer, and will remain open for one month after the date of this letter or until you reject it, whichever is earlier. After that period, we will initiate the eminent domain process. To avoid litigation, we are offering an amount for the easement that exceeds the value of the rights we seek.

To accept this offer, the authorized person(s) must execute two original Easement and Right of Way forms before a notary public and return them to the undersigned in the enclosed postage pre-paid envelope before the expiration of the one month period. Also, the enclosed W-9 tax form needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents. This settlement remains in place regardless of whether Keystone receives its federal permit.

Our strong preference is to reach voluntary agreement and we will continue these efforts regardless of the initiation of legal processes. In the event that we must invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim M. Irons
Senior Land Coordinator
TransCanada
717 Texas Street
Suite 24215
Houston, TX 7702-2761

Encl.

cc: Lee H. Hamann, McGrath North Mullin & Kratz, PC LLO
John Hunt, TransCanada

Attachment 8.13

10. Threats to Condemn without a
Permit
c. Copy of letter to Bruning and reply

August 12, 2010
1312 Road 6
York, NE 68467

Jon Bruning
Office of the Attorney General
2115 State Capitol
Lincoln, NE 68509-4604

Dear Mr. Bruning,

I am writing to you over the concern of the TransCanada Keystone XL Pipeline. This pipeline is scheduled to go through our property which consists of native prairie. I am concerned over losing this prairie as well as the dangers of polluting the Ogallala Aquifer. I have written TransCanada asking questions. I have not received any replies from the company. I have not signed any easement papers. I just received a somewhat threatening letter from TransCanada. At first I thought it was the answers to my questions. Instead it was a letter that says unless the easement papers are signed "we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property."

My question to you is can TransCanada threaten us with eminent domain if they have no permits yet and the Environmental Impact Statement agreement has been given to them?

I am sure I am not the only one receiving these letters. I urge you to use your power to protect the citizens of the State of Nebraska.

Sincerely,

Susan C. Dunavan

Attachment 8.14



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
TIERONE FAX (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LIZ EBERLE
CONSTITUENT SERVICES DIRECTOR

September 30, 2010

Susan Dunavan
1312 Road 6
York, NE 68467

Dear Susan:

Thank you for taking time to contact our office. We are sorry to hear about the frustrations you and your family are going through.

We share your concern for preservation of native prairie and the pristine quality of the water stored in the Ogallala Aquifer, and are monitoring the progression of the TransCanada Keystone XL Pipeline in Nebraska. While our office is unable to provide private legal advice, we can confirm that public utilities, under certain circumstances, do have the authority to exercise eminent domain.

Since your property rights may be impacted by the proposed pipeline, we encourage you to speak with someone familiar with real estate law to determine the best course of action. We appreciate your interest and concern in contacting our office.

We appreciate your interest and concern in contacting our office.

Sincerely,

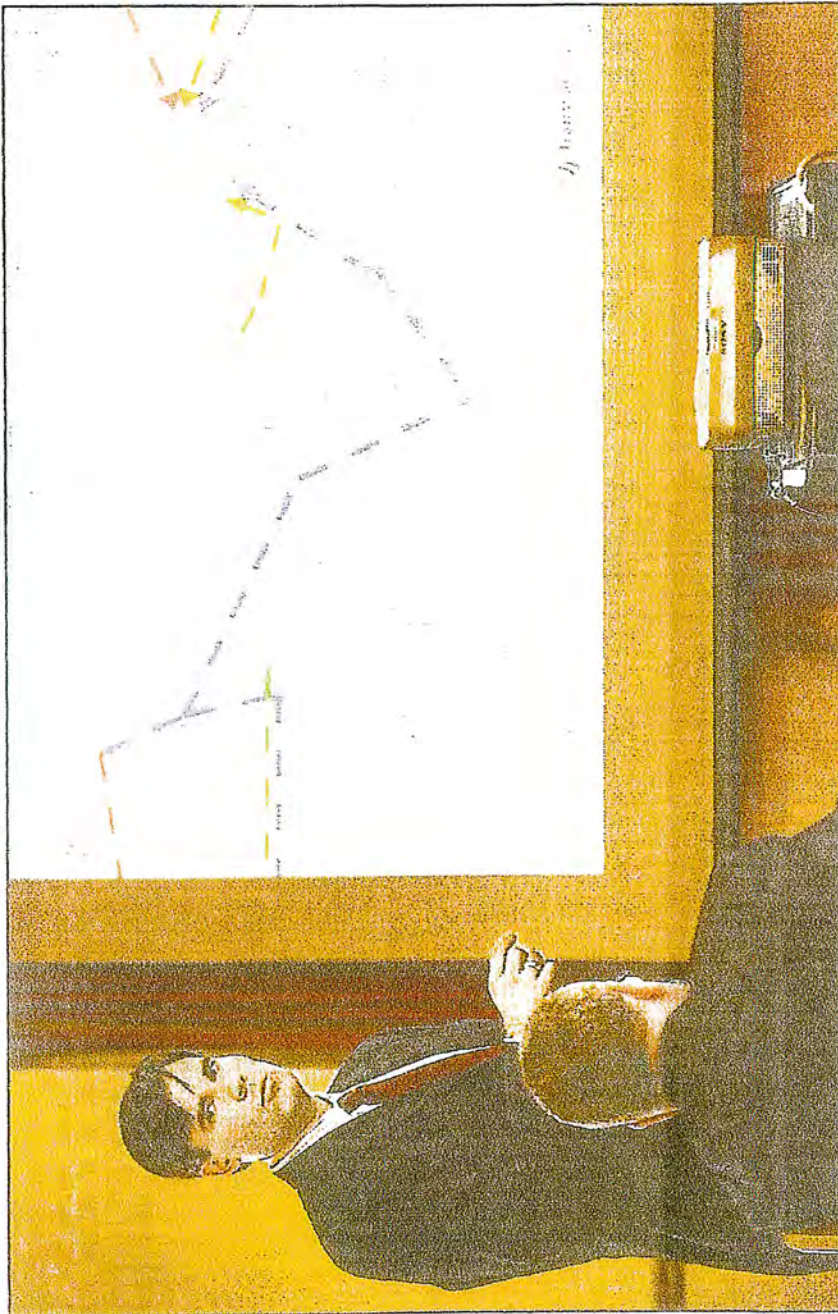
JON BRUNING
Attorney General

Liz Eberle
Constituent Services Director

Attachment 8.15

11. Realizing TransCanada is a Foreign (non U.S.A.) Operation from beginning to end. Lincoln Journal Star 9-4-2011

PIPELINE PRESENTATION



Louis Fenyvesi, manager of marketing, supply and oil pipelines for TransCanada, gives a presentation during the briefing for Keystone XL Pipeline at The Cornhusker Marriott on Wednesday morning.

FRANCIS GARDLER/Lincoln Journal Star

Pointing fingers

Governor asks Obama to deny permit for Keystone XL Pipeline; legislative debate



Jeff Rattin, TransCanada's spokesman in Nebraska, runs the PowerPoint presentation for

Attachment 8.16

CORNHUSKER ECONOMICS

University of Nebraska–Lincoln Extension

UNIVERSITY OF
Nebraska
Lincoln

February 9, 2011

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
<http://agecon.unl.edu/cornhuskereconomics>

The Keystone XL Pipeline Project

Market Report	Yr Ago	4 Wks Ago	2/4/11
Livestock and Products,			
Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$84.58	\$105.29	\$105.50
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	115.22	147.34	149.05
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	98.21	126.83	126.32
Choice Boxed Beef, 600-750 lb. Carcass	139.34	165.81	172.40
Western Corn Belt Base Hog Price Carcass, Negotiated	64.08	70.45	80.09
Feeder Pigs, National Direct 50 lbs, FOB	*	*	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	68.59	78.35	88.95
Slaughter Lambs, Ch. & Pr., Heavy, Woolled, South Dakota, Direct	*	161.00	*
National Carcass Lamb Cutout, FOB	243.26	352.13	347.71
Crops,			
Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu	3.72	6.87	7.87
Corn, No. 2, Yellow Omaha, bu	3.36	5.68	6.55
Soybeans, No. 1, Yellow Omaha, bu	9.01	13.21	13.91
Grain Sorghum, No. 2, Yellow Dorchester, cwt	5.21	9.46	10.95
Oats, No. 2, Heavy Minneapolis, MN, bu	2.26	3.89	4.15
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	135.00	140.00	140.00
Alfalfa, Large Rounds, Good Platte Valley, ton	87.50	72.50	72.50
Grass Hay, Large Rounds, Premium Nebraska, ton	82.50	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average	104.00	186.00	197.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average	33.75	65.00	67.25
No Market			

Prior to Canadian Prime Minister Harper's visit to the White House last week, the United States Department of State released the EnSys study¹ of the controversial Keystone XL pipeline project proposed to run through Nebraska's sandhills. The release ignited new debates amid concern that the U.S. Department of State would soon decide whether to grant a permit for the pipeline. The Nebraska Unicameral is considering bills to provide more constraints on pipeline construction. Below is a summary of information about this project that could affect many Nebraskans.

What is Keystone XL?

Actually, it is the XL extension, or Phase IV, that is at issue in Nebraska. This is a 36-inch pipeline to transport Alberta crude oil, primarily from tar sands through Montana, South Dakota, Nebraska and Kansas into Oklahoma, with a capacity of 0.5 million barrels per day (mbd), larger than the other pipelines from Canada. By way of contrast, total U.S. consumption has been about 21 mbd, with imports of 8.5 mbd of which 2.0 are from Canada, 1.3 from Mexico, 1.1 from Saudi Arabia, 0.9 from Venezuela and 0.8 from Nigeria. U.S. ethanol production is nearing 0.9 mbd. The XL extension would enter Nebraska near Burton and exit near Fairbury, following a 357 mile route including five pumping stations.² The total cost of the extension is about \$7 billion.

Who is Behind Keystone XL?

The pipeline would be built and owned by TransCanada Corp., a publicly traded Canadian pipeline and power generating company. TransCanada also owns the Keystone pipeline running from north to south in Eastern Nebraska, with a 0.4 mbd capacity. Another pipeline, the Kinder Morgan Express-Platte extension, crosses the state from west to east and has a capacity of 0.4 mbd. At this point, the U.S. Department of State has final authority to approve the XL extension.



Extension is a Division of the Institute of Agriculture and Natural Resources at the University of Nebraska–Lincoln cooperating with the Counties and the U.S. Department of Agriculture.

University of Nebraska Extension educational programs abide with the non-discrimination policies of the University of Nebraska–Lincoln and the United States Department of Agriculture.

12. Other Evidence

a. "Cornhusker Economics" 2-9-2011

Why Do They Want to Build It?

TransCanada wants to build the pipeline because they expect a satisfactory return on their investment. Oil production in Alberta is scheduled to double, oil that can be shipped into the U.S. at a competitive price. Current pipeline capacity from Canada is adequate for a decade or more, but pipeline configurations have reportedly led to congestion and low prices in the Midwest which could be improved with this construction. The project itself is unlikely to have any significant effect on total world production or consumption. Given current consumption trends, Canada would likely ship its extra production to Asia if the XL extension were not built, resulting in just a geographical reallocation.

The EnSys study, commissioned by the U.S. State Department, estimates that under current trends with the pipeline the U.S. will increase its Canadian imports by 2.6 million barrels per day by 2030. Given that production and imports from Mexico and Venezuela are projected to dwindle, the study concludes that the alternative to Canadian petroleum is an increase in U.S. dependence on imports from the Middle East. These projections assume a continuation of current U.S. energy policies. Opponents of the pipeline point out that the existence of the pipeline would undermine U.S. efforts to replace petroleum consumption with renewable fuels.

Environmental Impacts

The potential Nebraska environmental impacts of the pipeline include scarring of sandhills' landscapes and related wildlife disruptions, but more importantly, the risk of contaminating waterways, soils and perhaps the High Plains Aquifer itself, due to oil spills. TransCanada claims to have adequate plans for remediation of the construction sites and for responding to leaks.³ The adequacy of those plans and the quality of the pipeline components have been challenged by opponents, however.⁴ In July, the Environmental Protection Agency (EPA) called for a more exhaustive environmental impact statement,⁵ which the State Department has not yet received.

The risks of spills is real. Just within the past year the U.S. has experienced pipeline ruptures at Talmadge Creek, Michigan and Red Butte, Utah, damaging several miles of waterways; and pump station leaks occurred at Ft. Greeley and at Prudhoe Bay on the Alaska pipeline.

Much of the opposition to the pipeline derives from opposition to the environmental impacts of tar sands petroleum itself. The California Air Resources Board calculates that its carbon footprint is 30 percent higher than conventional petroleum,⁶ and the mining processes have scarred the landscape in Alberta and polluted waterways and adjacent lands.⁷ Pipeline proponents counter this argument by pointing out that Canada expects to triple its tar sands production for the world market,⁸ regardless of the Keystone XL. Opponents reply that the

U.S. should not collaborate in developing this "dirty" energy source by encouraging its use here. (Canada is the third largest per-capita greenhouse gas polluter, it has exceeded its Kyoto target by 30 percent, and it has recently joined Japan and Russia in opposing the extension of the Kyoto agreement beyond 2012.)

Impact on the Nebraska Economy

Construction and maintenance of the pipeline would contribute an unknown amount of jobs and tax returns to the Nebraska economy. A study by Perryman,⁹ commissioned by TransCanada, estimates that construction and development would contribute 7,551 person-years of temporary jobs in Nebraska, \$9.5 million to state revenues and another \$1.8 million to local government revenues. They estimate the long-term (100 years) present value of increased property taxes at \$152 million. Although we have not carefully assessed the validity of this analysis, some of its assumptions strike us as optimistic. For example, the National Wildlife Federation shows that the employment figures in this report are 65 percent higher than those estimated by the Department of State.¹⁰ The study makes no attempt to evaluate economic losses that might occur because of oil spills, scarred landscapes, water contamination, etc.

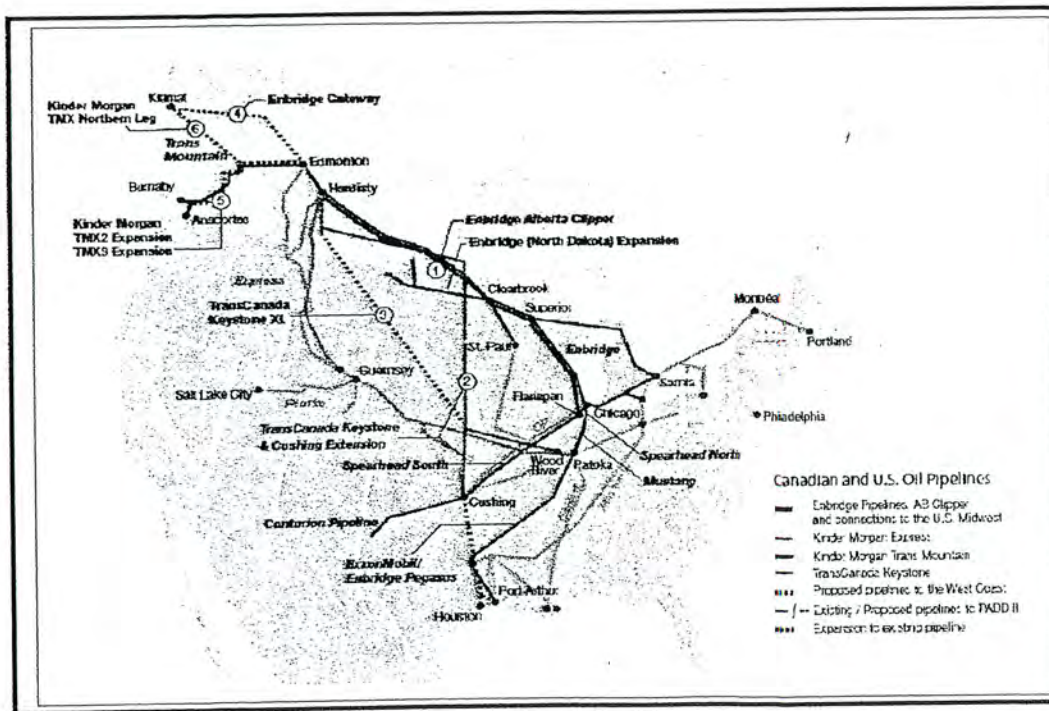
Considering the potential benefits and costs alluded to above, we do not support the project. While there is room for disagreement on this policy issue, supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks.

Richard K. Perrin, (402) 472-9818
Roberts Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
rperrin@unl.edu

Lilyan Fulginiti, (402) 472-0651
Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
lfulginiti@unl.edu

References:

- ¹ <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/AssmtDrftAcpt.pdf?OpenFileResource>
- ² http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf
- ³ http://www.transcanada.com/docs/Key_Projects/SandhillsNativeRangeland.pdf
- ⁴ See, for example: <http://plainsjustice.org/> and http://dirtyoilsands.org/dirtyspots/category/keystone_xl/obamas_choice/
- ⁵ http://www.downstreamtoday.com/news/article.aspx?a_id=23434
- ⁶ California Air Resources Board, <http://www.arb.ca.gov/fuels/lcfs/091307oharelcfs.pdf>
- ⁷ Proceedings of the National Academy of Science, September 14, 2010, Vol. 107 No. 37 16178-16183.
- ⁸ Natural Resources Canada, <http://www.nrcan-rncan.gc.ca/eneene/sources/pripri/aboapr-eng.php>
- ⁹ Perryman Group, http://www.transcanada.com/docs/Key_Projects/Perryman_Group_Nebraska_Report.pdf
http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf
- ¹⁰ http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Keystone_XL_Jobs_11-09-10.ashx



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Susan Dunavan in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
York County)

1 **Q: Please state your name.**

2 A: My name is Susan Dunavan.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in York County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: William Dunavan.

EXHIBIT

20

exhibitsticker.com

1 **Q: Do you have children?**

2 A: Yes, five.

3 **Q: Do you have grandchildren?**

4 A: Yes, nine living and two that have passed away.

5 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
6 **and or your family?**

7 A. Yes.

8 **Q: For the land that would be affected and impacted by the proposed KXL tar**
9 **sands pipeline give the Commissioners a sense how long the land has been in**
10 **your family and a little history of the land.**

11 A: When we purchased our land in 1979 the previous owner requested that the land
12 be kept as pastureland and not be farmed. We were very willing to make this
13 promise as that was our intention all along...to keep the property as pastureland
14 and to increase the varieties of native grasses, flowers, and forbes. This land has
15 become our heritage over the years and is one of the last stands of native prairie in
16 York County. We paid on this land for 30 years, working overtime and our
17 American Dream is now gone. This land is where our children were raised and
18 where our grandchildren come and run and explore. To us this land is priceless.
19 There is an intermittent stream that runs through our property as well as about 6
20 acres of woods. The combination of prairie, stream bed and small forest makes for
21 an immense diversity of plant and animal life. There have been new discoveries in
22 every season over the past 38 years and we hope our family's hard work and love
23 of the land will not be torn apart.

24 **Q: What do you do for a living?**

25 A: My husband and I own a crop consulting business called Nebraska Crop and Soil
26 Systems. We started the business in 1978 and currently consult with
27 approximately 30 farms in a 45 mile radius of York, Nebraska. My husband is the
28 President and consultant and I am the Secretary, Treasurer, and Chief Investigator
29 for all background work that needs to be done in running a business.

1 **Q: Do you earn any income from this land?**

2 A: Yes.

3 **Q: Have you depended on the income from your land to support your livelihood**
4 **or the livelihood of your family?**

5 A: Yes.

6 **Q: Have you ever in the past or have you thought about in the future leasing all**
7 **or a portion of your land in question here?**

8 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
9 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
10 all the restrictions and risks and potential negative impacts to farming or ranching
11 operations as opposed to land that did not have those same risks. If I was looking
12 to lease or rent ground I would pay more for comparable non-pipeline land than I
13 would for comparable pipeline land and I think most folks would think the same
14 way. This is another negative economic impact that affects the landowner and the
15 county and the state and will forever and ever should TransCanada's preferred or
16 mainline alternative routes be approved.

17 **Q: Do you have similar concerns about selling the land?**

18 A: Well I hope not to have to sell the land in my lifetime but times change and you
19 never know what is around the corner and yes I am concerned that if another piece
20 of ground similar to mine were for sale and it did not have the pipeline and mine
21 did that I would have a lower selling price. I think this would be true for pipeline
22 ground on both the preferred and mainline alternative routes.

23 **Q: What is your intent with your land after you die?**

24 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
25 to come but I have thought about getting out if this pipeline were to come through.

26 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
27 **Pipeline would cross the land described above and owned by you?**

28 A: Yes.

1 **Q: Were you or an entity for which you are a member, shareholder, or director**
2 **previously sued by TransCanada Keystone Pipeline, LP?**

3 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
4 petition for condemnation against our land so it could place its proposed pipeline
5 within an easement that it wanted to take from us on our land.

6 **Q: Did you defend yourself and your land in that condemnation action?**

7 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
8 and expenses in our resistance of TransCanada's lawsuit against us.

9 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
10 **incurred?**

11 **A:** No, they have not.

12 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
13 **property that it wanted to take for its proposed pipeline?**

14 **A:** The lawsuit against us stated they would take the amount of property that is
15 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
16 and equipment reasonably necessary to operate the pipeline.

17 **Q: Did TransCanada define what they meant by "property that is reasonably**
18 **necessary"?**

19 **A:** No, they did not.

20 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
21 **property portion of your land?**

22 **A:** Yes, they did.

23 **Q: Did TransCanada describe what rights it proposed to take related to the**
24 **eminent domain property on your land?**

25 **A:** Yes, they did.

26 **Q: What rights that they proposed to take did they describe?**

27 **A:** TransCanada stated that the eminent domain property will be used to "lay, relay,
28 operate, and maintain the pipeline and the plant and equipment reasonably
29 necessary to operate the pipeline, specifically including surveying, laying,

1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
2 reconstructing, removing and abandoning one pipeline, together with all fittings,
3 cathodic protection equipment, pipeline markers, and all their equipment and
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
5 petroleum products, and all by-products thereof.”

6 **Q: Prior to filing an eminent domain lawsuit to take your land that**
7 **TransCanada identified, do you believe they attempted to negotiate in good**
8 **faith with you?**

9 A: No, I do not.

10 **Q: Did TransCanada at any time approach you with or deliver to you their**
11 **proposed easement and right-of-way agreement?**

12 A: Yes, they did.

13 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
14 **agreement, did you understand that they would be purchasing a fee title**
15 **interest in your property or that they were taking something else?**

16 A: I understood that they proposed to have the power to take both a temporary
17 construction easement that could last for a certain period of time and then also a
18 permanent easement which they described to be 50 feet across or in width, and
19 that would run the entire portion of my property from where a proposed pipeline
20 would enter my property until where it would exit the property.

21 **Q: Is the document included with your testimony here as Attachment No. 3, a**
22 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
23 **Way agreement that they included with their condemnation lawsuit against**
24 **you?**

25 A: Yes, it is.

26 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
27 **and Right-of-Way agreement?**

28 A: Yes, I have.

Q: What is your understanding of the significance of the Easement and Right-of-Way agreement as proposed by TransCanada?

A: My understanding is that this is the document that will govern all of the rights and obligations and duties as well as the limitations of what I can and cannot do and how I and any future landowner and any person I invite to come onto my property must behave as well as what TransCanada is and is not responsible for and how they can use my land.

Q: After reviewing TransCanada's proposed Easement and Right-of-Way agreement do you have any concerns about any portions of it or any of the language either included in the document or missing from the proposed document?

A: Yes, I have a number of significant concerns and worries about the document and how the language included and the language not included potentially negatively impacts my land and thereby potentially negatively impacts my community and my state.

Q: I would like you to walk the Commissioners through each and every one of your concerns about TransCanada's proposed Easement and Right-of-Way agreement so they can develop an understanding of how that language and the terms of that contract, in your opinion, potentially negatively impacts you and your land. So, if you can start at the beginning of that document and let's work our way through it, okay?

A: Yes, I'll be happy to express my concerns about TransCanada's proposed Easement and Right-of-Way agreement and how it negatively could affect my property rights and my economic interests.

Q: Okay, let's start with your first concern please.

A: The very first sentence talks about consideration or how much money they will pay to compensate me for all of the known and unknown affects and all of the rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at
2 the signing of the easement agreement. That is a huge problem.

3 **Q: Explain to the Commissioners why that is a problem.**

4 A: It is not fair to the landowner, the county, or the State. It is not fair to the
5 landowner because they want to have my land forever for use as they see fit so
6 they can make a daily profit from their customers. If I was to lease ground from
7 my neighbor I would typically pay twice a year every year as long as they granted
8 me the rights to use their land. That only makes sense – that is fair. If I was going
9 to rent a house in town I would typically pay monthly, every month until I gave up
10 my right to use that house. By TransCanada getting out on the cheap and paying
11 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
12 revenue collection on the money I would be paid and then pay taxes on and
13 contribute to this state and this country. It is money I would be putting back into
14 my local community both spending and stimulating the local economy and
15 generating more economic activity right here. Instead TransCanada's shareholders
16 keep all that money and it never finds its way to Nebraska.

17 **Q: What is your next concern?**

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
20 limited partnership..." and I have no idea who that really is. I have no idea who is
21 forcing this pipeline on us or who the owners of the entities are, or what are the
22 assets backing this limited partnership, or who the general partner is, or who all
23 the limited partners are, and who makes up the ownership of the these partners or
24 the structure or any of the basic things you would want to know and understand if
25 you would want to do business with such an outfit. According to TransCanada's
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but
2 virtually none of the ownership and who knows if it has any other assets.

3 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
4 percent clear on exactly who could become the owner of over 275 miles of
5 Nebraska land?

6 **A:** No.

7 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
8 percent clear on exactly who will be operating and responsible for
9 approximately 275 miles of tar sands pipeline underneath and through
10 Nebraska land?

11 **A:** No.

12 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
13 and the State of Nebraska of TransCanada's easement terms.

14 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
15 called "Grantee")..." and this concerns me because it would allow my easement to
16 be transferred or sold to someone or some company or country or who knows what
17 that I don't know and who we may not want to do business with. This pipeline
18 would be a huge asset for TransCanada and if they can sell to the highest bidder
19 that could have terrible impacts upon all of Nebraska depending upon who may
20 buy it and I don't know of any safeguards in place for us or the State to veto or
21 have any say so in who may own, operate, or be responsible for this pipeline in the
22 future.

23 **Q:** Do you think that type of uncertainty and lack of control over a major piece
24 of infrastructure crossing our State is in the public interest?

25 **A:** No, certainly not, in fact, just the opposite.

26 **Q:** What's next?

27 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.
2 Perpetual to me is forever and that doesn't make sense.

3 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

4 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
5 data proving there is a perpetual supply of tar sands. I am not aware in
6 TransCanada's application where it proves there is a perpetual necessity for this
7 pipeline. My understanding of energy infrastructure like wind towers is they have
8 a decommission plan and actually take the towers down when they become
9 obsolete or no longer needed. Nothing manmade lasts forever. My land however
10 will, and I want my family or future Nebraska families to have that land as
11 undisturbed as possible and it is not in my interest or the public interest of
12 Nebraska to be forced to give up perpetual and permanent rights in the land for
13 this specific kind of pipeline project.

14 **Q: Okay, what is your next concern?**

15 A: The easement language includes all these things TransCanada can do and it says
16 "...abandoning in place..." so they can just leave this pipeline under my ground
17 until the end of time just sitting there while they are not using it, but I am still
18 prevented from doing on my land and using my land what I would like. If I owned
19 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
20 there. It doesn't make sense and it scares me and it is not in my interest or the
21 public interest of Nebraska to allow this.

22 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
23 **right?**

24 A: Yes.

25 **Q: So now on the second page of the Easement what are your concerns?**

26 A: Here the Easement identifies a 24-month deadline to complete construction of the
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period
28 starts to run from the moment "actual pipeline installation activities" begin on
29 Landowners property. It appears that TransCanada would define this phrase as

needed. It would be wise to explain what types of TransCanada action constitutes “installation activity” For instance, would the placement and storage of an excavator or other equipment on or near the Easement property be an activity or would earth have to be moved before the activity requirement is triggered. This vague phrase is likely to lead to future disputes and litigation that is not in the best interest of the welfare of Nebraska and would not protect property interests. The 24-months can also be extended in the case of “force majeure.” My understanding is that force majeure is often used to insulate a party to a contract when events occur that are completely out of their control. In TransCanada’s easement this is expanded to include “without limitation...availability of labor and materials.” Extending this language to labor and materials is problematic because these are two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of

1 this provision, you must consider the potentially extremely expensive fight a
2 Landowner would have over this question of whether or not damage was an act of
3 negligence. Putting this kind of potential liability upon the Landowner is
4 incredibly problematic and is detrimental to the protection of property rights. I
5 don't think this unilateral power which I can't do anything about as the landowner
6 is in the best economic interest of the land in question or the State of Nebraska for
7 landowners to be treated that way.

8 **Q: Is there any specific event or example you are aware of that makes this**
9 **concern more real for you?**

10 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
11 Nemaha County, Nebraska landowner farmers who accidentally struck two
12 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
13 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
14 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
15 copy of the Federal Court Complaint is here as **Attachment No. 4.**

16 **Q: What is your next concern with the Easement language?**

17 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
18 they choose unless 1) any Landowner use interferes in any way with
19 TransCanada's exercise of any of its rights within the Easement, or 2)
20 TransCanada decides to take any action on the property it deems necessary to
21 prevent injury, endangerment or interference with anything TransCanada deems
22 necessary to do on the property. Landowner is also forbidden from excavating
23 without prior authorization by TransCanada. So my understanding is that
24 TransCanada will unilaterally determine what Landowner can and can't do based
25 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
26 could also completely deny my request to excavate. Further, TransCanada retains
27 all "privileges necessary or convenient for the full use of the rights" granted to
28 them in the Easement. Again, TransCanada unilaterally can decide to the
29 detriment of the property rights of Landowner what TransCanada believes is

necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to

1 justify installing the pipeline 24 inches beneath the surface. The ability to use this
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively
3 affect Landowners property are not conducive to the protection of property rights.
4 A shallow pipeline is much more likely to become a danger and liability in the
5 future given farming operations and buried irrigation lines and other factors
6 common to the current typical agricultural uses of the land in question impacted
7 by TransCanada's preferred pipeline route.

8 **Q: What is the next concern you have with the Easement language?**

9 A: There are more vague concepts solely at the determination of TransCanada such as
10 "as nearly as practicable" and "pre-construction position" and "extent reasonably
11 possible." There is nothing here that defines this or provides a mechanism for
12 documenting or memorializing "pre-construction position" so as to minimize
13 costly legal battles or wasted Landowner time attempting to recreate the soil
14 condition on their fields or pasture. Such unilateral powers would negatively affect
15 Landowners property are not conducive to the protection of property rights or
16 economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada maintains the unilateral right to abandon the pipeline and all
19 appurtenances thereto in place on, under, across, or through Nebraska land at any
20 time it chooses. There is no provision for Landowner compensation for such
21 abandonment nor any right for the Landowner to demand removal. Such unilateral
22 powers would negatively affect Landowners property are not conducive to the
23 protection of property rights or economic interest.

24 **Q: What is the next concern you have with the Easement language?**

25 A: TransCanada has the power to unilaterally move or modify the location of any
26 Easement area whether permanent or temporary at their sole discretion.
27 Regardless, if Landowner has taken prior steps relative the their property in
28 preparation or planning of TransCanada's taking of the initial easement area(s),
29 the language here does not require TransCanada to compensate the Landowner if

they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiation any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"

- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

1 **Q:** Based upon what you have shared with the Commission above regarding
2 TransCanada's proposed Easement terms and agreement, do you believe
3 those to be reasonable or just, under the circumstances of the pipeline's
4 impact upon you and your land?

5 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
6 discussed previously.

7 **Q:** Did TransCanada ever offer you financial compensation for the rights that
8 they sought to obtain in your land, and for what they sought to prevent you
9 and any future land owner of your property from doing in the future?

10 **A:** Yes, we received an offer from them.

11 **Q:** As the owner of the land in question and as the person who knows it better
12 than anyone else, do you believe that TransCanada offered you just, or fair,
13 compensation for all of what they proposed to take from you so that their tar
14 sands pipeline could be located across your property?

15 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
16 offer for all the potential impacts and effects and the rights that I'm giving up, and
17 what we will be prevented from doing in the future and how their pipeline would
18 impact my property for ever and ever.

19 **Q:** Has TransCanada at any time offered to compensate you annually, such as
20 wind farm projects do, for the existence of their potential tar sands pipeline
21 across your property.

22 **A:** No, never.

23 **Q:** At any time did TransCanada present you with or request that you, as the
24 owner of the land in question, sign and execute a document called, "Advanced
25 Release of Damage Claims and Indemnity Agreement?"

26 **A:** Yes, they did.

27 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
28 "Advanced Release of Damage Claims and Indemnity Agreement?"

29 **A:** Yes, it is.

1 **Q: What was your understanding of that document?**
2 A: When I read that document in the plain language of that document, it was my
3 understanding that TransCanada was attempting to pay me a very small amount at
4 that time in order for me to agree to give up my rights to be compensated from
5 them in the future related to any damage or impact they may have upon my
6 property “arising out of, in connection with, or alleged to resulted from
7 construction or surveying over, under or on” my land.
8 **Q: Did you ever sign that document?**
9 A: No, I did not.
10 **Q: Why not?**
11 A: Because I do not believe that it is fair or just to try to get me to agree to a small
12 sum of money when I have no idea how bad the impacts or damages that they, or
13 their contractors, or subcontractors, or other agents or employees, may cause on
14 my land at any time in the future that resulted from the construction or surveying
15 or their activities upon my land.
16 **Q: When you reviewed this document, what did it make you feel?**
17 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
18 shield themselves against known and foreseeable impacts that their pipeline, and
19 the construction of it, would have upon my land. It made me feel that they knew it
20 was in their financial interest to pay me as little as possible to prevent me from
21 ever having the opportunity to seek fair compensation again, and that this must be
22 based upon their experience of unhappy landowners and situations in other places
23 where they have built pipelines.
24 **Q: Has TransCanada ever contacted you and specifically asked you if you**
25 **thought their proposed location of their proposed pipeline across your land**
26 **was in your best interest?**
27 A: No, they have not.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in the public interest of the State of Nebraska?

4 A: No, they have not.

5 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
6 Takings Clause?

7 A: Yes, I am.

8 Q: What is your understanding of the Fifth Amendment as it relates to taking of
9 an American citizens property?

10 A: My understanding is that, according to the United States Constitution, that if the
11 government is going to take land for public use, then in that case, or by taking for
12 public use, it can only occur if the private land owner is compensated justly, or
13 fairly.

14 Q: Has TransCanada ever contacted you specially to explain the way in which
15 the public could use its proposed Keystone XL Pipeline?

16 A: No, they have not.

17 Q: Can you think of any way in which the public, that is the citizens of the State
18 of Nebraska, can directly use the proposed TransCanada Keystone XL
19 Pipeline, as it dissects the State of Nebraska?

20 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
21 public benefits from this pipeline in any way, how they can use it any way, or how
22 it's in the public interest in any way. By looking at the map, it is quite clear to me
23 that the only reason it's proposed to come through Nebraska, is that because we
24 are geographically in the way from between where the privately-owned Tar Sands
25 are located to where TransCanada wants to ship the Tar Sands to refineries in
26 Houston, Texas.

27 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
28 crude petroleum, or oil and petroleum by-products that you would like to
29 ship in its pipeline?

1 A: No, it has not.

2 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
3 products that you, at this time or any time in the future, would desire to place
4 for transport within the proposed TransCanada Keystone XL Pipeline?

5 A: No, I do not.

6 Q: Do you know anyone in the state of Nebraska who would be able to ship any
7 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
8 products within the proposed TransCanada Keystone XL Pipeline?

9 A: No, I do not. I've never heard of such a person or company like that.

10 Q: Do you pay property taxes for the land that would be affected and impacted
11 at the proposed TransCanada Keystone XL Pipeline?

12 A: Yes, I do.

13 Q: Why do you pay property taxes on that land?

14 A: Because that is the law. The law requires us to pay the property taxes as the owner
15 of that property.

16 Q: Because you follow the law and pay property taxes, do you believe you
17 deserve any special consideration or treatment apart from any other person
18 or company that pays property taxes?

19 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
20 just what you do.

21 Q: Do you believe the fact that you pay property taxes entitles you to special
22 treatment of any kind, or special rights of any kind?

23 A: No, of course not.

24 Q: Do you believe the fact that you pay property taxes on your land would be
25 enough to qualify you to have the power of eminent domain to take land of
26 your neighbors or other people in your county, or other people across the
27 state of Nebraska?

28 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
29 I expect an award for or any type of special consideration.

1 **Q: Have you at any time ever employed any person other than yourself?**

2 A: Well, yes I have.

3 **Q: Do you believe that the fact that you have, at some point in your life,**
4 **employed one or more other persons entitle you to any special treatment or**
5 **consideration above and beyond any other Nebraskan that has also employed**
6 **one or more persons?**

7 A: No, of course not.

8 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
9 **have at one point employed another person within this state, entitles you to**
10 **preferential treatment or consideration of any kind?**

11 A: No, of course not. If I choose to employ someone that decision is up to me. I
12 don't deserve any special treatment or consideration for that fact.

13 **Q: At the beginning of your statement, you briefly described your property that**
14 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
15 **give the Commissioners a sense of specifically how you believe the proposed**
16 **Keystone XL Pipeline and its preferred route, which proposes to go across**
17 **your land, how it would in your opinion based on your knowledge,**
18 **experience, and background of your land, affect it. So please share with the**
19 **Commissioners the characteristics of your land that you believe is important**
20 **for them to understand, while they evaluate TransCanada's application for a**
21 **route for its proposed pipeline to cross Nebraska and across your land,**
22 **specifically.**

23 A: I have included this answer in my attached documents.

24 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
25 **crude oil pipeline in its preferred location, or ultimate location across the**
26 **state of Nebraska?**

27 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
28 or even bullied around and being made to feel scared that they did not have any
29 options but to sign whatever papers TransCanada told them they had to. I am

1 aware of folks being threatened that their land would be taken if they didn't follow
2 what TransCanada was saying. I am aware of tactics to get people to sign
3 easements that I don't believe have any place in Nebraska or anywhere such as
4 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
5 landowners and convince them they should sign TransCanada's easement
6 agreements. I am aware of older folks and widows or widowers feeling they had
7 no choice but to sign TransCanada's Easement and they didn't know they could
8 fight or stand up for themselves. From a more practical standpoint, I am worried
9 that according to their answer to our Interrogatory No. 211, TransCanada only
10 owns and operates one (1) major oil pipeline. They simply do not have the
11 experience with this type of pipeline and that scares me. There are others but that
12 is what I can recollect at this time and if I remember more or my recollection is
13 refreshed I will share those with the Commissioners at the Hearing in August.

14 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
15 **landowner is reasonable or just?**

16 **A:** No, I do not.

17 **Q: Do you have any concern about limitations that the construction of this**
18 **proposed pipeline across your affected land would prevent construction of**
19 **future structures upon the portion of your land affected by the proposed**
20 **easement and immediately surrounding areas?**

21 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
22 structures directly across or touching the easement, and it would be unwise and I
23 would be uncomfortable to build anything near the easement for fear of being
24 blamed in the future should any damage or difficulty result on my property in
25 regards to the pipeline.

26 **Q: Do you think such a restriction would impact you economically?**

27 **A:** Well yes, of course.

28 **Q: How do you think such a restriction would impact you economically?**

1 A: The future of this land may not be exactly how it's being used as of this moment,
2 and having the restrictions and limiting my ability to develop my land in certain
3 ways presents a huge negative economic impact on myself, my family, and any
4 potential future owner of the property. You have no idea how I or the future owner
5 may want to use this land in the future or the other land across Nebraska
6 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
7 ago it would have been hard to imagine all the advances that we have now or how
8 things change. Because the Easement is forever and TransCanada gets the rights in
9 my land forever we have to think with a very long term view. By placing their
10 pipeline on under across and through my land that prevents future development
11 which greatly negatively impacts future taxes and tax revenue that could have
12 been generated by the County and State but now will not. When you look at the
13 short blip of economic activity that the two years of temporary construction efforts
14 may bring, that is far outweighed by the perpetual and forever loss of opportunity
15 and restrictions TransCanada is forcing upon us and Nebraska.

16 **Q: Do you have any concerns about the environmental impact of the proposed**
17 **pipeline?**

18 A: Yes, I do.

19 **Q: What are some of those concerns?**

20 A: As an affected land owner and Nebraskan, I am concerned that any construction,
21 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
22 a detrimental impact upon the environment of my land specifically, as well as the
23 lands near my land and surrounding the proposed pipeline route.

24 **Q: Do you have any other environmental concerns?**

25 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
26 construction and/or maintenance and operation. I am concerned about spills and
27 leaks that TransCanada has had in the past and will have in the future. This could
28 be catastrophic to my operations or others and to my county and the State. A 2½%

1 detection level for spills is inadequate-a ridiculous safeguard for a pipeline of this
2 magnitude. More concerns are in my attached documents.

3 **Q: Do you have any thoughts regarding if there would be an impact upon the**
4 **natural resources on or near your property due to the proposed pipeline?**

5 A: Yes, I believe that any construction, operation, and/or maintenance of the
6 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
7 resources of my land, and the lands near and surrounding the proposed pipeline
8 route.

9 **Q: Do you have any worries about potential impacts from the proposed pipeline**
10 **to the soil of your land, or land near you?**

11 A: Yes, I believe that any construction, operation, and/or maintenance of the
12 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
13 land, as well as land along and surrounding the proposed pipeline route. This
14 includes, but is not limited to, the reasons that we discussed above of disturbing
15 the soil composition and makeup as it has naturally existed for thousands and
16 millions of years during the construction process, and any future maintenance or
17 removal process. I'm gravely concerned about the fertility and the loss of
18 economic ability of my property to grow the crops, or grow the grasses, or grow
19 whatever it is at that time they exist on my property or that I may want to grow in
20 the future, or that a future owner may want to grow. The land will never be the
21 same from as it exists now undisturbed to after it is trenched up for the proposed
22 pipeline.

23 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
24 **upon the groundwater over your land, or surrounding lands?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 groundwater of not only under my land, but also near and surrounding the pipeline
28 route, and in fact, potentially the entire State of Nebraska. Water is life plain and

1 simple and it is simply too valuable to our State and the country to put at
2 unreasonable risk.

3 **Q: Do you have any concern about the potential impact of the proposed pipeline**
4 **upon the surface water on, or near or around your land?**

5 A: Yes, I have significant concerns that any construction, operation, and/or
6 maintenance of the proposed Keystone XL Pipeline would have detrimental
7 impact upon the surface water of not only within my property boundary, but along
8 and near and surrounding the pipeline route, and in fact, across the state of
9 Nebraska.

10 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
11 **upon the wildlife and plants, other than your growing crops on or near your**
12 **land?**

13 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
14 the proposed Keystone XL Pipeline would have a detrimental impact upon the
15 wildlife and the plants, not only that are located on or can be found upon my land,
16 but also near and along the proposed pipeline route.

17 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
18 **fair market value of your land?**

19 A: Yes, I do. I am significantly concerned about how the existence of the proposed
20 pipeline underneath and across and through my property will negatively affect the
21 fair market value at any point in the future, especially at that point in which I
22 would need to sell the property, or someone in my family would need to sell the
23 property. I do not believe, and certainly would not be willing to pay, the same
24 price for land that had the pipeline located on it, versus land that did not. I hope
25 there is never a point where I'm in a position where I have to sell and have to
26 realize as much value as I can out of my land. But because it is my single largest
27 asset, I'm gravely concerned that the existence of the proposed Keystone XL
28 Pipeline upon my land will affect a buyer's willingness to pay as much as they
29 would've paid and as much as I could've received, if the pipeline were not upon

1 my property. There are just too many risks, unknowns, impacts and uncertainties,
2 not to mention all of the rights you give up by the nature of having the pipeline
3 due to having the easement that we have previously discussed, for any reasonable
4 person to think that the existence of the pipeline would not negatively affect my
5 property's value.

6 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
7 **testimony?**

8 **A:** Yes, I have.

9 **Q: Where have you seen that before?**

10 **A:** That is a map I think I first saw a couple years ago that shows the Keystone XL
11 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
12 believe the portion of the alternative route in Nebraska essentially twins or
13 parallels Keystone I.

14 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
15 **Application, and as found on Attachment No. 7, here to your testimony, is in**
16 **the public interest of Nebraska?**

17 **A:** No, I do not.

18 **Q: Do you believe that the Keystone mainline alternative route as shown on**
19 **Attachment No. 7 included with your testimony here is a major oil pipeline**
20 **route that is in the public interest of Nebraska?**

21 **A:** No, I do not.

22 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
23 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
24 **your testimony, is in the public interest of Nebraska?**

25 **A:** No, I do not.

26 **Q: Do you believe there is any potential route for the proposed Keystone XL**
27 **Pipeline across, within, under, or through the State of Nebraska that is in the**
28 **public interest of the citizens of Nebraska?**

29 **A:** No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that its preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with from TransCanada’s own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to our Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working specifically on

1 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
2 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
3 Further, according to their answer to Interrogatory No. 199, TransCanada would
4 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
5 constructed on its Preferred Route or its Mainline Alternative Route.

6 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
7 **because it would cross your land?**

8 A: No, absolutely not. I am opposed to this project because it is not in the public
9 interest, neither within my community nor within our state.

10 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
11 **was to cross someone else's land?**

12 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
13 the fear and anxiety and potential foreseeable risks and negative impacts that this
14 type of a project carrying this type of product brings foisted upon anyone in this
15 state or any other state.

16 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
17 **Pipeline to cross the state of Nebraska?**

18 A: I don't believe there is an intelligent route because as I have stated I don't believe
19 this project anywhere within Nebraska is within the public interest. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
23 **like the Public Service Commissioners to consider in their review of**
24 **TransCanada's Application?**

25 A: No, I have not. I have shared that which I can think of as of the date I signed this
26 document below but other things may come to me or my memory may be
27 refreshed and I will add and address those things at the time of the Hearing in
28 August and address any additional items at that time as is necessary. Additionally,
29 I have not had an adequate amount of time to receive and review all of

1 TransCanada's answers to our discovery and the discovery of others so it was
2 impossible to competently and completely react to that in my testimony here and I
3 reserve the right to also address anything related to discovery that has not yet
4 concluded as of the date I signed this document below. Lastly, certain documents
5 requested have not yet been produced by TransCanada and therefore I may have
6 additional thoughts on those I will also share at the hearing as needed.

7 **Q: What is it that you are requesting the Public Service Commissioners do in**
8 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
9 **across Nebraska?**

10 A: I am respectfully and humbly requesting that the Commissioners think far beyond
11 a temporary job spike that this project may bring to a few counties and beyond the
12 relatively small amount of taxes this proposed foreign pipeline would possibly
13 generate. And, instead think about the perpetual and forever impacts of this
14 pipeline as it would have on the landowners specifically, first and foremost, but
15 also thereby upon the entire state of Nebraska, and to determine that neither the
16 preferred route nor the Keystone mainline alternative route are in the public
17 interest of the citizens of the state of Nebraska.

18 **Q: Does Attachment No. 8 here contain other documents you are competent to**
19 **speak about that you wish to be part of your testimony and to discuss in more**
20 **detail as needed at the August 2017 Hearing?**

21 A: Yes.

22 **Q: Are all of your statements in your testimony provided above true and**
23 **accurate as of the date you signed this document to the best of your**
24 **knowledge?**

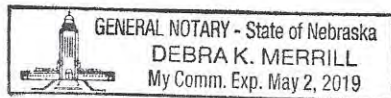
25 A: Yes, they are.

26 **Q: Thank you, I have no further questions at this time and reserve the right to**
27 **ask you additional questions at the August 2017 Hearing.**

Susan Dunavan
Susan Dunavan

Subscribed and Sworn to me before this 24th day of May, 2017.

Debra K. Merrill
Notary Public



Attachment 8.2

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

W ½ SE ¼ 6-9-2 YORK COUNTY, NEBRASKA

1. **DESTRUCTION OF NATIVE PRAIRIE:** We have some of the last surviving Native Prairie in York County, Nebraska. When we called the County Assessor years ago at the start of the Keystone XL controversy and asked how much native prairie there was in York County, we were told they did not know there was any. In the Draft Environmental Impact Statement 3.5.2.1 it states, "Native grasslands or prairies are among the most threatened native vegetation communities in the United States". TransCanada's brochures promised to **"RESTORE"** lands impacted by this project. Our easements and the EIS mention the terms **"RESEED, REVEGETATE, RESESTABLISH and RECLAIM** interchangeably. None of these terms define **"RESTORE"**. We have over 15 species grass and over 90 species of flowers, forbs and herbs. The EIS Construction/Reclamation Plan for Tall Grass Prairie lists only 6 varieties of grass that will be provided. **This is NOT RESTORATION.** Also the Draft Report for the Nebraska Department of Environmental Quality mentions that "Less than 2% of seed was available or could be obtained in the future from local ecotypes...without availability of local ecotype seed, restoration would be extremely difficult if not impossible".
2. **MANY WELLS NOT DOCUMENTED:** The Keystone Mapping Project has documented wells listed in the Environmental Impact Statement. Looking at the map we saw that our two wells were not identified and neither were our neighbor's wells. If this is the case along the proposed route, there must be innumerable wells that are not documented.
3. **DO WE REALLY CONTINUE TO OWN OUR PROPERTY?** TransCanada states that despite their easements, the property owners will still own their land and can continue to use it. In our case, the diagonal cutting through our property would allow TransCanada to control our land use. Our property has a perfect dam site that we have intended to utilize and we have been told that "Grantor shall not...construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization". This gives control of our entire property to a foreign corporation. An easement of 4-6 acres across takes away control of our entire 80 acre parcel. There shall be no water conservation dam, nor a modern underground cattle watering system, etc.
4. **WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?** With oil at or below \$50.00 a barrel and the cost of tar sands extraction needing to be \$80.00 or above to even break even, what is the real motive of this pipeline going over the aquifer? During a Natural Resources Committee hearing on February 9, 2011, Jim Krause, operations director for TransCanada stated "if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product...or maybe by that time in the future, water".
5. **INSURANCE:** Purchasing a \$20,000,000 liability policy annually by a landowner cannot be afforded without continual rents, royalties, percentages, residual payments, etc. The landowner is stuck with a one-time payment and a perpetual liability.

6. PERPETUAL EASEMENT: The easements offered by TransCanada are **FOREVER**. Even for a \pm 50 year project. This should never be allowed.
7. TAXES: The landowner must forever pay property tax on land taken by the easement.
8. SUBCONTRACTORS: All of TransCanada's work seems to be done by subcontractors. We have grave concerns over the supervision of these contractors. With everything being subcontracted, TransCanada does not need to be responsible, need to answer to anyone and there seem to be no penalties, consequences or fines if something is not done correctly.
9. LANDOWNER AGREEMENTS: All of the 7 easement offers we have had do not cover all of our concerns. TransCanada can promise us the world...they can promise they will follow the EIS and the 57 Special Conditions they have agreed to, but if these are not specifically outlined in our easements, there is no way they can actually be enforced and are nothing more than mere suggestions.
10. THREATS TO CONDEMN WITHOUT A PERMIT: Most people enjoy seeing FedEx come up their driveway...not anymore.
11. REALIZING THAT TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:

NEGATIVE IMPACTS OF KEYSTONE XL ON THE PROPERTY OF BILL AND SUSAN DUNAVAN

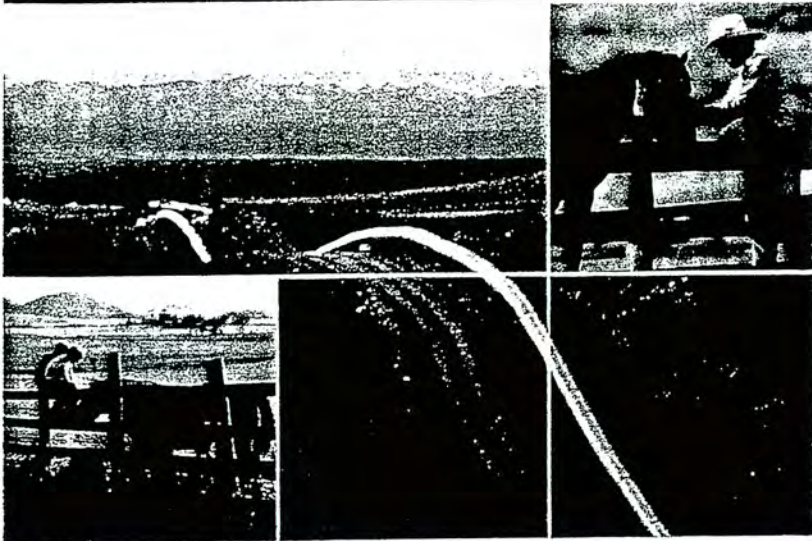
W1/2 se ¼ 6-9-2 YORK COUNTY NEBRASKA

EVIDENCE

1. DESTRUCTION OF NATIVE PRAIRIE:
 - a. TransCanada Brochure stating they will "restore" Prairie
 - b. Plant listing from our property
 - c. Trow Engineering stating they were hired for "Reclamation" survey, not "Restoration"
 - d. Photos of plants on our property can be made available
2. MANY WELLS NOT DOCUMENTED:
 - a. Nebraska Department of Natural Resources list of wells with GPS
 - b. Overlay from local platt book showing numerous residences all with wells, some with cattle windmills all left off report
 - c. Copy of map with DNR wells, made by "Keystone XL Mapping Project"
3. DO WE REALLY CONTINUE TO OWN OUR PROPERTY?:
 - a. Easement language prohibiting dam construction, digging, etc.
4. WHAT WILL BE THE USE OF THE PIPELINE AFTER THE "OIL"?
 - a. Copy of Business Card of Jim Krause
 - b. Natural Resources Committee Hearing 2-9-2011 with statement of Krause
 - c. Reference to Beck Plan R.W. Beck and Assoc. 1967 for Missouri River Basin
5. INSURANCE:
 - a. No documentation other than current property liability policy. Need bid from Insurance Company for \$20 million policy
6. PERPETUAL EASEMENT:
 - a. See Easement language
7. TAXES:
8. SUBCONTRACTORS:
 - a. Business card of TransCanada spokesman Jeff Rauh.
 - b. Personal observation of Bill Dunavan and others that surveyor's vehicles were inscribed with "International Pegasus" on their doors.
9. LANDOWNER AGREEMENT:
 - a. See Easement (s) Language
 - b. Only terms written into easements can be enforced
10. THREATS TO CONDEMN WITHOUT A PERMIT:
 - a. Copy of Letter from TransCanada dated: 7-21-2010
 - b. Copy of Letter from TransCanada dated: 4-7-2011
 - c. Copy of Letter to Atty. General Bruning and Attorney General's Office Reply dated 8-12-10 and 9-30-10 respectively.
11. REALIZING TRANSCANADA IS A FOREIGN (NON U.S.A.) OPERATION FROM BEGINNING TO END:
 - a. Copy from front page of Lincoln Journal Star with photo of TransCanada explaining the destination of their KXL products 9-4-2011.
12. OTHER EVIDENCE:
 - a. "Cornhusker Economics" Newsletter 2-9-2011 Conclusion, " Considering the potential benefits and costs alluded to above, we do not support the project...supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks." Richard K. Perrin, Dr. Lilyan Fulginiti, Department of Agricultural Economics.
 - b. 30+ Binders full of well documented information at Susan Dunavan's Office.
 - c. Dunavan Family Photo

Attachment 8.3

What Landowners Can Expect



- We will negotiate in good faith for land rights needed for the Keystone XL project. Fair value will be paid for land rights.
- In more than 50 years of building and operating its pipeline system TransCanada has used eminent domain or right-of-entry procedures very sparingly. We are committed to extending that positive record.
- We will work cooperatively with individual landowners to identify and address issues of crop loss, construction impacts and plans to bring land back to an equivalent productivity capability.
- The Keystone XL Pipeline project will be designed, constructed, operated and maintained in a manner that minimizes impact on landowners and the environment.

Keystone XL Pipeline Project

We are committed to treating all landowners who may be affected by the Keystone XL Pipeline honestly, fairly and respectfully. We recognize that construction of a pipeline on or near land you own raises many questions; it is important that you understand what we are proposing and how you can participate in the process.

The preliminary Keystone XL Pipeline route is based on an analysis of land use, topography and environmental data. Refinements to the route have been – and will be – made based on feedback from landowners, communities and agencies reviewing the proposal, as well as our own detailed environmental and engineering analysis of the route. Even as Keystone XL acquires right-of-way for the pipeline, we will strive to understand and address landowner and community concerns.

Guiding Principles for Landowner Relations

- We seek to develop positive relationships with landowners through open communication, honesty, fairness and mutual respect.
- We plan to keep potentially impacted landowners informed of the project status on an ongoing basis throughout all phases of the project.

About Pipeline Easements:

- A right-of-way easement, negotiated in good faith between the landowner and the pipeline company, would grant Keystone XL the right to construct, operate, and maintain the pipeline. It specifies an easement width within which certain activities are restricted or prohibited, with the primary goal of keeping the pipeline safe. For example, while buildings and excavation are not allowed in the right-of-way, normal farming and cultivation practices are not restricted.
- Canada, the permanent right-of-way width for Keystone XL is generally 20 metres (66 feet) – 10 metres (32 feet) on either side of the pipeline. In addition to the permanent easement lands, temporary working space will be required for the construction phase of the project which will consist of generally 10 metres of additional space

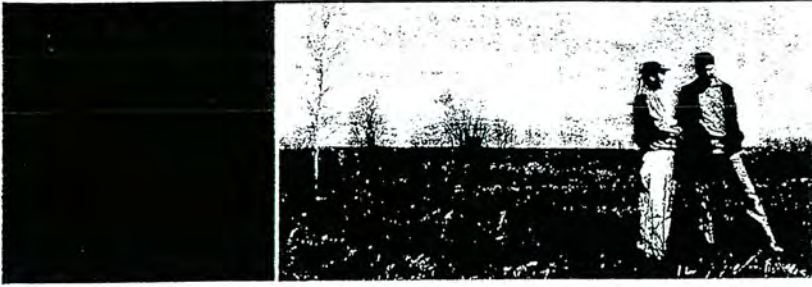
The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



1. Destruction of Native Prairie

a. TransCanada Brochure saying they will "restore" Prairie

What Landowners Can Expect



- In the US, the permanent right-of-way easements will be 50 feet (15 meters) wide, with an additional 60 feet (18 metres) of temporary workspace.
- In Canada and the U.S., additional temporary work space may also be required for road crossings and other unique construction features.
- Keystone XL will work with landowners on specific issues such as crop losses, timber, drainage and irrigation systems, wells, fences, equipment, improvements, and other potential construction impacts in order to return the land to full productivity.
- There are no restrictions for crossing the right-of-way with normal farming equipment. If it is necessary for unusually heavy equipment to cross the right-of-way or to excavate near the right-of-way, we request that the pipeline company be contacted in advance to ensure the safety of landowners, work crews and the pipeline itself.
- The easement document and rights run with the land and are not impacted by changes in land ownership.
- Keystone XL will reclaim disturbed land and return it to its equivalent productivity.
- Keystone XL will be responsible for any taxes assessed against the pipeline. Responsibility for property taxes remains with the landowner.
- It is important that landowners read easement agreements carefully and understand the information they contain.

Next Steps

- Keystone XL will seek to acquire rights from landowners to build, operate and maintain the pipeline, will compensate for construction losses and inconvenience and will restore the land impacted by construction activities.
- The Keystone XL pipeline is proposed to be buried with a minimum of 1.2 metres (4 feet of cover), except in site-specific areas, such as consolidated rock, in which case the pipeline will be buried with at least 0.9 metres (3 feet) of cover.

- Keystone XL is responsible for repair of drain tiles, irrigation, or other buried utilities if damaged during Keystone XL construction.
- Keystone XL will seek to minimize road impact and will be responsible for repair of all impacted roads after construction.

If at any time you have questions about the easement process, we encourage you to contact your local Keystone XL land agent or the Keystone XL Project Office.

Contact

For more information, please call our toll free project number (1.866.717.7473) or use our project-specific email address keystone@transcanada.com

Landowner Inquiries

Canada (toll free) 1.866.412.5263

U.S. (toll free) 1.866.585.7063

Alternatively, you can refer to our website at www.transcanada.com/keystone/kxl or write, attention to:

In Canada

TransCanada Keystone XL Project Team
450 – 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

In the U.S.

TransCanada Keystone XL Project Team
7505 NW Tiffany Springs Parkway
Northpointe Circle II Suite 400
Kansas City, MO 64153

The proposed Keystone XL project is a partnership between TransCanada and ConocoPhillips.



Attachment 8.6

Available Water Well Data within One Mile of the Centerline in Nebraska					
Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
33685	78	4	Irrigation	40.298858	-97.128610
55201	85	4	Irrigation	40.302412	-97.165644
27339	94	4	Irrigation	40.302455	-97.156787
167639	100	4	Domestic	40.305444	-97.157083
37347	104	4	Irrigation	40.306886	-97.151301
152036	106	4	Irrigation	40.309528	-97.184639
111927	108	4	Irrigation	40.309665	-97.146575
36153	136	4	Irrigation	40.316823	-97.175042
31236	52	5	Irrigation	40.316745	-97.150734
111584	0	5	Irrigation	40.318676	-97.182170
152485	26	5	Domestic	40.320694	-97.170504
74892	31	5	Irrigation	40.324180	-97.194023
74893	32	5	Irrigation	40.324125	-97.184554
117460	34	5	Irrigation	40.324079	-97.176563
171179	35	5	Irrigation	40.327972	-97.203444
25153	36	5	Irrigation	40.329153	-97.156161
5826	36	5	Irrigation	40.331427	-97.194005
120967	38	5	Irrigation	40.331205	-97.170333
201131	40	5	Domestic	40.336000	-97.189639
68097	42	5	Irrigation	40.338831	-97.212793
189303	46	5	Irrigation	40.338694	-97.194111
150524	52	5	Irrigation	40.340173	-97.165520
125535	53	5	Domestic	40.340241	-97.166201
4507	64	5	Irrigation	40.342523	-97.168948
63338	64	5	Irrigation	40.344116	-97.196278
64323	64	5	Irrigation	40.345982	-97.203272
7765	65	5	Irrigation	40.347619	-97.178951
34246	80	5	Irrigation	40.349683	-97.196142
191554	80	5	Domestic	40.349556	-97.184611
170166	123	5	Irrigation	40.350066	-97.193235
37708	26	6	Irrigation	40.351722	-97.209741
92721	27	6	Domestic	40.353060	-97.179226
96294	28	6	Irrigation	40.353681	-97.202636
7422	30	6	Irrigation	40.355338	-97.219279
197624	30	6	Irrigation	40.357028	-97.183944
72376	32	6	Irrigation	40.358976	-97.228781
54795	33	6	Irrigation	40.358919	-97.186011
80753	35	6	Irrigation	40.360766	-97.212270
100286	35	6	Irrigation	40.360772	-97.193112
10797	36	6	Irrigation	40.362607	-97.200269
37264	37	6	Irrigation	40.368204	-97.236823
58027	38	6	Irrigation	40.368046	-97.221699
191450	39	6	Irrigation	40.367805	-97.198362
32985	40	6	Irrigation	40.369174	-97.213108
54516	40	6	Irrigation	40.369784	-97.195398
71159	40	6	Irrigation	40.373502	-97.228776
204381	42	6	Irrigation	40.375444	-97.211694
32682	44	6	Irrigation	40.379233	-97.220457
76356	44	6	Irrigation	40.380709	-97.219280

2.Many Wells Not Documented

- a. Nebraska Dept. of Natural Resources list of wells with GPS

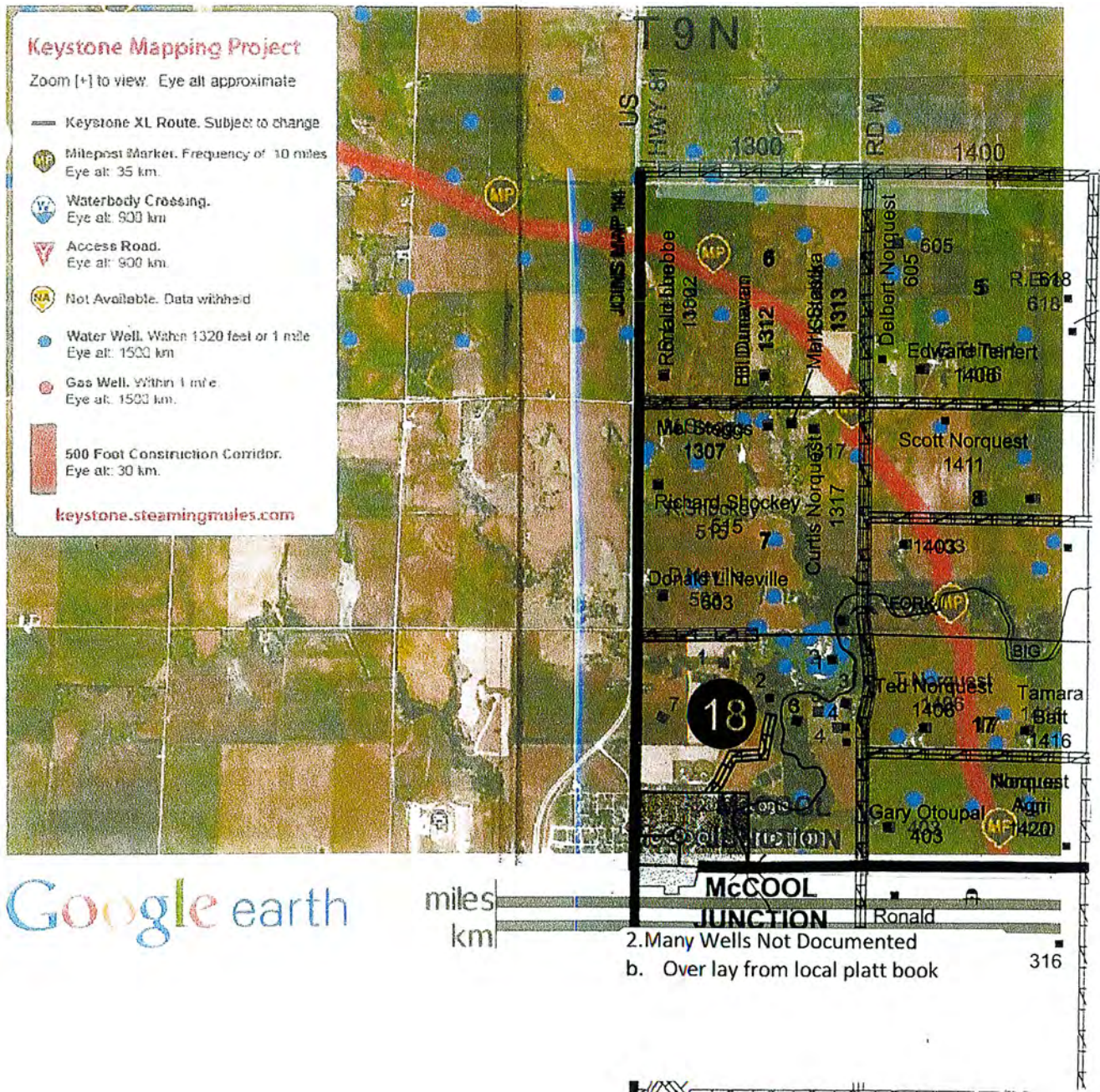
Available Water Well Data within One Mile of the Centerline in Nebraska

Well ID	Total Well Depth (Feet)	Static Water Level (Feet)	Use	Latitude	Longitude
197482	45	6	Domestic	40.392917	-97.234889
146020	48	6	Domestic	40.394000	-97.231333
166811	49	6	Domestic	40.408439	-97.219041
133782	50	6	Domestic	40.414308	-97.231213
164535	51	6	Domestic	40.433108	-97.293222
172076	53	6	Domestic	40.434388	-97.281194
93213	54	6	Domestic	40.464275	-97.293027
128865	57	6	Domestic	40.474502	-97.311259
74110	58	6	Irrigation	40.529867	-97.366267
63850	60	6	Irrigation	40.538703	-97.349358
43322	65	6	Irrigation	40.541074	-97.394679
83358	70	6	Irrigation	40.542530	-97.382780
33882	80	6	Irrigation	40.542440	-97.353237
32152	102	6	Irrigation	40.546043	-97.391162
83466	104	6	Irrigation	40.546417	-97.382964
60669	121	6	Irrigation	40.548511	-97.386756
124335	147	6	Irrigation	40.549736	-97.392320
171143	24	7	Irrigation	40.549322	-97.372272
35350	33	7	Domestic	40.549756	-97.386508
19317	37	7	Irrigation	40.549861	-97.381900
72588	37	7	Irrigation	40.549914	-97.376283
42353	38	7	Irrigation	40.550651	-97.400601
73978	38	7	Irrigation	40.553429	-97.401758
69809	39	7	Irrigation	40.553459	-97.363763
82123	39	7	Irrigation	40.553942	-97.373264
204484	39	7	Domestic	40.558383	-97.404200
119455	39	7	Irrigation	40.564295	-97.402032
104461	40	7	Irrigation	40.564252	-97.392373
205091	40	7	Domestic	40.566833	-97.395611
206175	40	7	Domestic	40.566778	-97.381000
28045	40	7	Irrigation	40.567753	-97.389931
155976	40	7	Irrigation	40.571576	-97.411245
136865	41	7	Irrigation	40.571389	-97.382927
91267	41	7	Domestic	40.573375	-97.420789
60670	41	7	Irrigation	40.574897	-97.401514
36247	43	7	Irrigation	40.574970	-97.394923
118764	44	7	Irrigation	40.578726	-97.420706
61349	44	7	Irrigation	40.578755	-97.411259
19318	48	7	Irrigation	40.578881	-97.404526
139100	50	7	Irrigation	40.578850	-97.401825
136198	50	7	Irrigation	40.578777	-97.382794
72309	50	7	Irrigation	40.580493	-97.389909
14131	50	7	Irrigation	40.582412	-97.416114
59362	52	7	Irrigation	40.583077	-97.401601
66636	53	7	Irrigation	40.584234	-97.408880
40831	53	7	Irrigation	40.586058	-97.429049
147804	60	7	Irrigation	40.589764	-97.439831
146043	60	7	Irrigation	40.593523	-97.444820
64500	63	7	Irrigation	40.593318	-97.430182

Source DNR, 2011. Available @ <http://dhrdata.dnr.ne.gov/wellsccs/menu.aspx>

2.Many Wells Not Documented

c. Copy of map with DNR wells made by Keystone XL Mapping Project



Attachment 8.7

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Natural Resources Committee
February 09, 2011

JIM KRAUSE: Twenty years. [LB340 LB578 LB629]

SENATOR SMITH: And that contract, of course, would begin the day that they would begin to receive or have they already begun to receive? [LB340 LB578 LB629]

JIM KRAUSE: It's once the people on the far end start to receive the oil, as they have already been doing since June on the first phase of the Keystone pipeline. [LB340 LB578 LB629]

SENATOR SMITH: One year, one year into it at this point. [LB340 LB578 LB629]

JIM KRAUSE: Yeah. Yep. [LB340 LB578 LB629]

SENATOR LANGEMEIER: Senator Haar. [LB340 LB578 LB629]

SENATOR HAAR: Since you're in operations, actually how much does this oil heat up because of friction? [LB340 LB578 LB629]

JIM KRAUSE: That's a great question that has been going around a number of times, and as stated earlier in this committee, we provide no heat to the pipe. But you're correct, the pipe does heat up from the friction not only from the pumps, but from the pipe itself. Ultimately, the oil of...the temperature of the pipe and the oil is governed mainly by ground temperature. That has a huge impact on the temperature of the oil. So as the oil comes up to a pump station, it can be very close to what the current ground temperature is four feet below ground. As it exits the station, some of that pumping will heat it up a bit, but it's not like it gets really, really hot and changes the viscosity to a great amount. [LB340 LB578 LB629]

SENATOR HAAR: Now you may not be the person to answer this one, maybe the next person, but if there is decommissioning for whatever purpose, who pays for that and

how are we guaranteed, for example, the landowners? [LB340 LB578 LB629]

JIM KRAUSE: Sure. It's an excellent question and it has come up a few times here.

There will be some testimony later that will cover that in detail, but, again, my background and knowledge of this is we're required through a permitting process through PHMSA, the Department of Transportation, we are held liable for reclamation and restoration of any abandoned pipeline. In technical terms, what that would mean, if the pipeline is not needed for oil somewhere down the road and there is no other use for any other product to go through that pipe, let's say gasoline, or maybe by that time in the future, water, then the pipeline needs to be...follow very stringent processes to be taken out of service. Cleaning pigs squeal down the pipeline and remove whatever oil is in the pipe. And then further pigs goes down and clean whatever residue is in there. And then, essentially, the pipe is closed at each end and the inert gas, such as nitrogen, is put into the pipe. The cathodic protection systems on the pipe continue to have the function, by law, to ensure the pipe doesn't corrode. And the nitrogen inside makes sure there's no internal corrosion taking place as well. [LB340 LB578 LB629]

SENATOR HAAR: So, but if some point, because everything eventually wears out, I mean, pipeline will last a lot longer than I will, but if it collapses at some point after it is decommissioned, how...who takes care of that? [LB340 LB578 LB629]

JIM KRAUSE: The owner of the pipeline which is us. [LB340 LB578 LB629]

SENATOR HAAR: And if you're no longer the owner? [LB340 LB578 LB629]

JIM KRAUSE: Whoever takes ownership from us would have to carry on that liability. [LB340 LB578 LB629]

SENATOR HAAR: And if it's abandoned and just, you know, goes through bankruptcy or something, I still...at the end you could come up with someone with a situation where

Attachment 8.10

9. Landowner Agreement
b. Only terms written into easements
can be enforced

1.56.1: Regarding Mitigation Commitments and Landowner Agreements, in the Draft Report the NDEQ “encourages Keystone to negotiate mutually acceptable agreements with adversely affected landowners to address potential construction and restoration issues.” The Nebraska Draft Evaluation Report, October 2012, Chapter 2 Project Description Overview Section 2.2.1 Right-of way Acquisition Process states:

To construct, operate, and maintain the proposed Nebraska Reroute, Keystone would negotiate easement agreements with landowners along the route. The easement agreements would list the conditions to which the landowners and Keystone both agree, including financial compensation to the landowners in return for granting easements. Compensation would also be made for loss of use during construction, crop loss, loss of nonrenewable or other resources, restrictions on future use of the land, and restoration of any unavoidable damage to personal property during construction. Easement negotiations and final agreements are private business concerns between the landowners and Keystone, and neither DOS nor NDEQ has legal authority or ability to intervene in the proceedings or enforce the conditions of an easement agreement. In most cases, agreements would allow the agricultural uses currently in place to continue within the permanent ROW after pipeline installation.

Attachment 8.11

10. Threats to Condemn without a Permit

a. Letter from TransCanada 7-21-10



July 21, 2010

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owner:

You by now are aware that TransCanada Keystone Pipeline L.P. ("Keystone") is constructing and will operate a 1,833 mile crude oil pipeline, which will begin in Canada and will cross through approximately 1,073 miles of property in the United States, including Nebraska. As you know, the path of the pipeline will cross a portion of your property.

In order to construct the pipeline, Keystone must acquire a permanent and temporary easement over your property. It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

The description of the proposed permanent and temporary easements is described in the enclosed form of easement and its attachments.

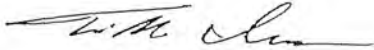
As consideration for granting Keystone these easements, TransCanada is offering you the total sum of _____. This sum includes _____ for the permanent easement, which represents 100% of the total fee value for the permanent easement, despite the fact the permanent easement encompasses significantly less property rights than the total fee. Additionally, the amount includes _____ for the temporary easement which is based upon a rental value of 50% of the fee value per year. Finally, Keystone will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

This letter is Keystone's final offer, and it will remain open for one month after the date of this letter or until you reject it. We believe the amount of the offer is a premium price for your property. Keystone's offer is high because the company prefers to acquire this property through negotiation and to avoid litigation and its associated delays and risks. In order to accept this offer, please have the authorized person(s) execute two original Easement and Right of Way forms before a notary public and return them to me in the enclosed postage pre-paid envelope before the expiration of the one month period. Also enclosed is a W-9 tax form that needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents.

While we hope to acquire this property through negotiation, if we are unable to do so, we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period. In the event that we are forced to invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons", with a stylized flourish at the end.

Tim M. Irons
Senior Land Coordinator
TransCanada Keystone Pipeline, L.P.
717 Texas Street
Suite 24215
Houston, TX 7702-2761

Encl.

Attachment 8.12



April 7, 2011

WILLIAM F. & SUSAN C. DUNAVAN
1312 ROAD 6
YORK, NE 68467

Re: ML-NE-YK-00600.000

Dear Owners:

The proposed route of a crude oil pipeline, known as Keystone XL, crosses a portion of your property in Nebraska. The project, proposed by Delaware-based TransCanada Keystone Pipeline L.P., responds to U.S. demand for crude oil from refineries seeking a secure and stable supply. The project seeks to create a land-based link between this U.S. demand and growing oil supplies in Canada and in the northern Great Plains states. Oil delivered would reduce the need for imports from Venezuela or the Middle East, significantly improving U.S. energy security.

The federal regulatory review of this proposed project continues and we expect a decision from the federal government in the first half of 2011. To construct the project, we must acquire permanent and temporary easements, and possibly other pipeline and construction related land rights, through the area where this project will be constructed in Canada and in the U.S., including in Nebraska.

Permanent easements provide Keystone limited rights to construct, operate, and maintain the pipeline. Landowners retain all rights of ownership and productive use of the easement area with only those restrictions that ensure the continued integrity and safety of the pipeline. In addition, temporary easements, which are in place only until construction and reclamation are completed, support the construction activities on the permanent easement.

To construct the pipeline, we must acquire a permanent and temporary easement over your property. The proposed permanent easement and temporary easement is described in the enclosed form of easement and its attachments.

It is our strong preference to negotiate a voluntary easement acquisition with each property owner. We have been working with Nebraska landowners since 2008 to understand how best to minimize the impact of this project on individual properties and operations. This process can include multiple visits to the land to address specific routing issues as well as provisions to minimize impacts associated with the construction process. You are receiving this letter because our discussions and negotiations are not progressing to a voluntary settlement in a timely manner.

In such circumstances, property laws in Nebraska and most other jurisdictions allow proponents of projects that are in the broader public interest to use eminent domain to acquire the easement, which is authorized pursuant to Nebraska Revised Statute § 57-1101 et. seq.

It is important to point out that in addition to the easement itself, Keystone's work on your land and the pipeline itself must be in compliance with applicable state and federal rules and regulations. In particular, throughout its route in the U.S., the safe operation of this pipeline is governed by the U.S. Department of Transportation. These requirements include measures required to ensure safety when the pipeline is operating and if it is shut down. Construction methods and techniques are spelled out in detail in the Construction Mitigation and Reclamation Plan, a copy of which you should have received as a part of the Draft Environmental Impact Statement issued by federal agencies reviewing this project (and available on the U.S. Department of State project web site at www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open under "Project Documents"). Additional requirements related to construction may be added as regulatory reviews continue to proceed.

As consideration for granting these easements, we are offering you the total sum of This sum includes for the permanent easement, which is based on 100 per cent of the current, unit fee value (i.e. dollars per acre as determined by an independent market assessment) of similar land in your region, despite the fact the permanent easement grants us significantly fewer property rights than outright ownership. Additionally, the amount includes or the temporary easement which is a rental value based on 50 per cent of the assessed unit fee value. Finally, we will provide compensation for any damages that occur during the course of the construction including crop loss and any damages to fences, trees or other improvements.

We prefer to acquire this property through negotiation and voluntary settlement. We will initiate eminent domain only as a last resort, where good faith efforts have not resulted in a voluntary agreement. Even after initiating this process, we will continue to work to reach a voluntary agreement.

This letter represents our final offer, and will remain open for one month after the date of this letter or until you reject it, whichever is earlier. After that period, we will initiate the eminent domain process. To avoid litigation, we are offering an amount for the easement that exceeds the value of the rights we seek.

To accept this offer, the authorized person(s) must execute two original Easement and Right of Way forms before a notary public and return them to the undersigned in the enclosed postage pre-paid envelope before the expiration of the one month period. Also, the enclosed W-9 tax form needs to be completely filled out, signed and returned along with the other forms. We will deliver the agreed upon amount of compensation to you immediately upon our receipt of the signed and notarized documents. This settlement remains in place regardless of whether Keystone receives its federal permit.

Our strong preference is to reach voluntary agreement and we will continue these efforts regardless of the initiation of legal processes. In the event that we must invoke the power of eminent domain, this letter and its contents are subject to Nebraska Revised Statute § 27-408 and are not admissible to prove the existence or amount of liability.

Please contact me in the event you have any questions or concerns at (832) 320-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Irons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim M. Irons
Senior Land Coordinator
TransCanada
717 Texas Street
Suite 24215
Houston, TX 7702-2761

Encl.

cc: Lee H. Hamann, McGrath North Mullin & Kratz, PC LLO
John Hunt, TransCanada

Attachment 8.13

10. Threats to Condemn without a
Permit
c. Copy of letter to Bruning and reply

August 12, 2010
1312 Road 6
York, NE 68467

Jon Bruning
Office of the Attorney General
2115 State Capitol
Lincoln, NE 68509-4604

Dear Mr. Bruning,

I am writing to you over the concern of the TransCanada Keystone XL Pipeline. This pipeline is scheduled to go through our property which consists of native prairie. I am concerned over losing this prairie as well as the dangers of polluting the Ogallala Aquifer. I have written TransCanada asking questions. I have not received any replies from the company. I have not signed any easement papers. I just received a somewhat threatening letter from TransCanada. At first I thought it was the answers to my questions. Instead it was a letter that says unless the easement papers are signed "we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property."

My question to you is can TransCanada threaten us with eminent domain if they have no permits yet and the Environmental Impact Statement agreement has been given to them?

I am sure I am not the only one receiving these letters. I urge you to use your power to protect the citizens of the State of Nebraska.

Sincerely,

Susan C. Dunavan

Attachment 8.14



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
TIERONE FAX (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LIZ EBERLE
CONSTITUENT SERVICES DIRECTOR

September 30, 2010

Susan Dunavan
1312 Road 6
York, NE 68467

Dear Susan:

Thank you for taking time to contact our office. We are sorry to hear about the frustrations you and your family are going through.

We share your concern for preservation of native prairie and the pristine quality of the water stored in the Ogallala Aquifer, and are monitoring the progression of the TransCanada Keystone XL Pipeline in Nebraska. While our office is unable to provide private legal advice, we can confirm that public utilities, under certain circumstances, do have the authority to exercise eminent domain.

Since your property rights may be impacted by the proposed pipeline, we encourage you to speak with someone familiar with real estate law to determine the best course of action. We appreciate your interest and concern in contacting our office.

We appreciate your interest and concern in contacting our office.

Sincerely,

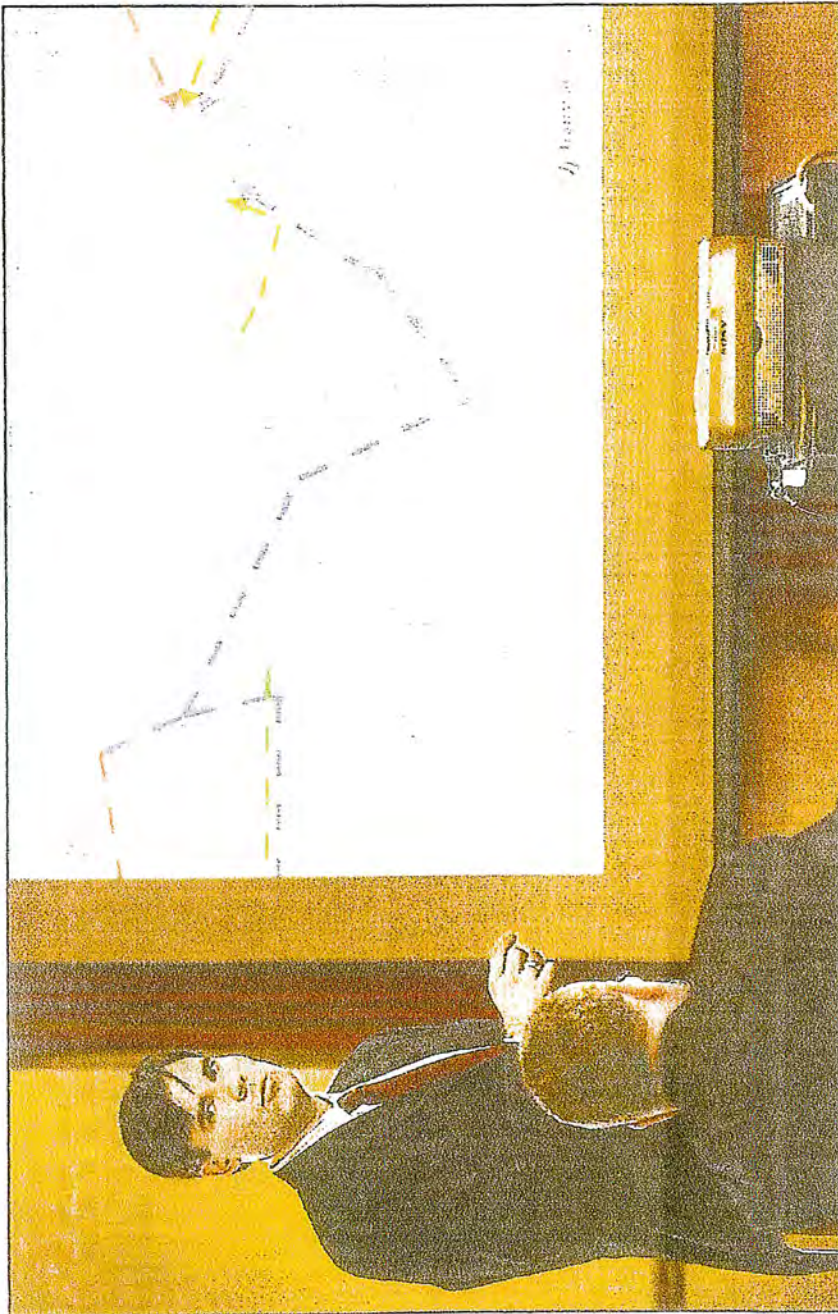
JON BRUNING
Attorney General

Liz Eberle
Constituent Services Director

Attachment 8.15

11. Realizing TransCanada is a Foreign (non U.S.A.) Operation from beginning to end. Lincoln Journal Star 9-4-2011

PIPELINE PRESENTATION



Louis Fenyvesi, manager of marketing, supply and oil pipelines for TransCanada, gives a presentation during the briefing for Keystone XL Pipeline at The Cornhusker Marriott on Wednesday morning.

FRANCIS GARDLER/Lincoln Journal Star

Pointing fingers

Governor asks Obama to deny permit for Keystone XL Pipeline; legislative debate



Jeff Rattin, TransCanada's spokesman in Nebraska, runs the PowerPoint presentation for

Attachment 8.16

CORNHUSKER ECONOMICS

University of Nebraska–Lincoln Extension

UNIVERSITY OF
Nebraska
Lincoln

February 9, 2011

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
<http://agecon.unl.edu/cornhuskereconomics>

The Keystone XL Pipeline Project

Market Report	Yr Ago	4 Wks Ago	2/4/11
Livestock and Products,			
Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	\$84.58	\$105.29	\$105.50
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb	115.22	147.34	149.05
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb	98.21	126.83	126.32
Choice Boxed Beef, 600-750 lb. Carcass	139.34	165.81	172.40
Western Corn Belt Base Hog Price Carcass, Negotiated	64.08	70.45	80.09
Feeder Pigs, National Direct 50 lbs, FOB	*	*	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	68.59	78.35	88.95
Slaughter Lambs, Ch. & Pr., Heavy, Woolled, South Dakota, Direct	*	161.00	*
National Carcass Lamb Cutout, FOB	243.26	352.13	347.71
Crops,			
Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu	3.72	6.87	7.87
Corn, No. 2, Yellow Omaha, bu	3.36	5.68	6.55
Soybeans, No. 1, Yellow Omaha, bu	9.01	13.21	13.91
Grain Sorghum, No. 2, Yellow Dorchester, cwt	5.21	9.46	10.95
Oats, No. 2, Heavy Minneapolis, MN, bu	2.26	3.89	4.15
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton	135.00	140.00	140.00
Alfalfa, Large Rounds, Good Platte Valley, ton	87.50	72.50	72.50
Grass Hay, Large Rounds, Premium Nebraska, ton	82.50	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average	104.00	186.00	197.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average	33.75	65.00	67.25
No Market			

Prior to Canadian Prime Minister Harper's visit to the White House last week, the United States Department of State released the EnSys study¹ of the controversial Keystone XL pipeline project proposed to run through Nebraska's sandhills. The release ignited new debates amid concern that the U.S. Department of State would soon decide whether to grant a permit for the pipeline. The Nebraska Unicameral is considering bills to provide more constraints on pipeline construction. Below is a summary of information about this project that could affect many Nebraskans.

What is Keystone XL?

Actually, it is the XL extension, or Phase IV, that is at issue in Nebraska. This is a 36-inch pipeline to transport Alberta crude oil, primarily from tar sands through Montana, South Dakota, Nebraska and Kansas into Oklahoma, with a capacity of 0.5 million barrels per day (mbd), larger than the other pipelines from Canada. By way of contrast, total U.S. consumption has been about 21 mbd, with imports of 8.5 mbd of which 2.0 are from Canada, 1.3 from Mexico, 1.1 from Saudi Arabia, 0.9 from Venezuela and 0.8 from Nigeria. U.S. ethanol production is nearing 0.9 mbd. The XL extension would enter Nebraska near Burton and exit near Fairbury, following a 357 mile route including five pumping stations.² The total cost of the extension is about \$7 billion.

Who is Behind Keystone XL?

The pipeline would be built and owned by TransCanada Corp., a publicly traded Canadian pipeline and power generating company. TransCanada also owns the Keystone pipeline running from north to south in Eastern Nebraska, with a 0.4 mbd capacity. Another pipeline, the Kinder Morgan Express-Platte extension, crosses the state from west to east and has a capacity of 0.4 mbd. At this point, the U.S. Department of State has final authority to approve the XL extension.



Extension is a Division of the Institute of Agriculture and Natural Resources at the University of Nebraska–Lincoln cooperating with the Counties and the U.S. Department of Agriculture.

University of Nebraska Extension educational programs abide with the non-discrimination policies of the University of Nebraska–Lincoln and the United States Department of Agriculture.

12. Other Evidence

a. "Cornhusker Economics" 2-9-2011

Why Do They Want to Build It?

TransCanada wants to build the pipeline because they expect a satisfactory return on their investment. Oil production in Alberta is scheduled to double, oil that can be shipped into the U.S. at a competitive price. Current pipeline capacity from Canada is adequate for a decade or more, but pipeline configurations have reportedly led to congestion and low prices in the Midwest which could be improved with this construction. The project itself is unlikely to have any significant effect on total world production or consumption. Given current consumption trends, Canada would likely ship its extra production to Asia if the XL extension were not built, resulting in just a geographical reallocation.

The EnSys study, commission by the U.S. State Department, estimates that under current trends with the pipeline the U.S. will increase its Canadian imports by 2.6 million barrels per day by 2030. Given that production and imports from Mexico and Venezuela are projected to dwindle, the study concludes that the alternative to Canadian petroleum is an increase in U.S. dependence on imports from the Middle East. These projections assume a continuation of current U.S. energy policies. Opponents of the pipeline point out that the existence of the pipeline would undermine U.S. efforts to replace petroleum consumption with renewable fuels.

Environmental Impacts

The potential Nebraska environmental impacts of the pipeline include scarring of sandhills' landscapes and related wildlife disruptions, but more importantly, the risk of contaminating waterways, soils and perhaps the High Plains Aquifer itself, due to oil spills. TransCanada claims to have adequate plans for remediation of the construction sites and for responding to leaks.³ The adequacy of those plans and the quality of the pipeline components have been challenged by opponents, however.⁴ In July, the Environmental Protection Agency (EPA) called for a more exhaustive environmental impact statement,⁵ which the State Department has not yet received.

The risks of spills is real. Just within the past year the U.S. has experienced pipeline ruptures at Talmadge Creek, Michigan and Red Butte, Utah, damaging several miles of waterways; and pump station leaks occurred at Ft. Greeley and at Prudhoe Bay on the Alaska pipeline.

Much of the opposition to the pipeline derives from opposition to the environmental impacts of tar sands petroleum itself. The California Air Resources Board calculates that its carbon footprint is 30 percent higher than conventional petroleum,⁶ and the mining processes have scarred the landscape in Alberta and polluted waterways and adjacent lands.⁷ Pipeline proponents counter this argument by pointing out that Canada expects to triple its tar sands production for the world market,⁸ regardless of the Keystone XL. Opponents reply that the

U.S. should not collaborate in developing this "dirty" energy source by encouraging its use here. (Canada is the third largest per-capita greenhouse gas polluter, it has exceeded its Kyoto target by 30 percent, and it has recently joined Japan and Russia in opposing the extension of the Kyoto agreement beyond 2012.)

Impact on the Nebraska Economy

Construction and maintenance of the pipeline would contribute an unknown amount of jobs and tax returns to the Nebraska economy. A study by Perryman,⁹ commissioned by TransCanada, estimates that construction and development would contribute 7,551 person-years of temporary jobs in Nebraska, \$9.5 million to state revenues and another \$1.8 million to local government revenues. They estimate the long-term (100 years) present value of increased property taxes at \$152 million. Although we have not carefully assessed the validity of this analysis, some of its assumptions strike us as optimistic. For example, the National Wildlife Federation shows that the employment figures in this report are 65 percent higher than those estimated by the Department of State.¹⁰ The study makes no attempt to evaluate economic losses that might occur because of oil spills, scarred landscapes, water contamination, etc.

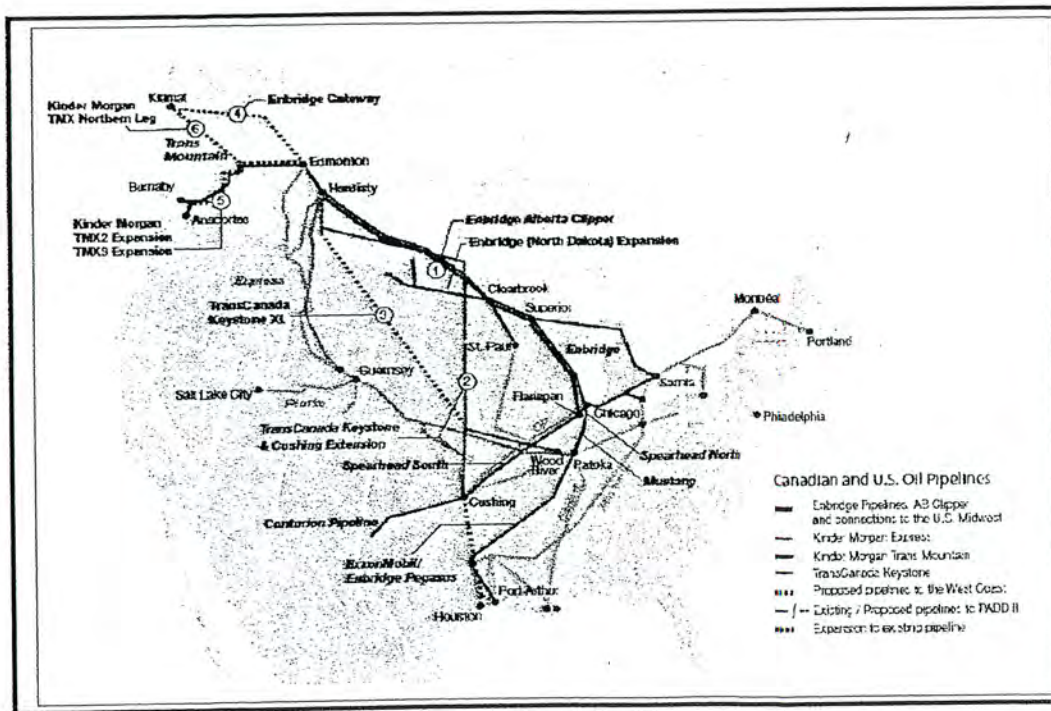
Considering the potential benefits and costs alluded to above, we do not support the project. While there is room for disagreement on this policy issue, supporters have yet to make a clear case that benefits to Nebraska would offset the costs and risks.

Richard K. Perrin, (402) 472-9818
Roberts Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
rperrin@unl.edu

Lilyan Fulginiti, (402) 472-0651
Professor
Dept. of Agricultural Economics
University of Nebraska-Lincoln
lfulginiti@unl.edu

References:

- ¹ <http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf/AssmtDrftAcpt.pdf?OpenFileResource>
- ² http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf
- ³ http://www.transcanada.com/docs/Key_Projects/SandhillsNativeRangeland.pdf
- ⁴ See, for example: <http://plainsjustice.org/> and http://dirtyoilsands.org/dirtyspots/category/keystone_xl/obamas_choice/
- ⁵ http://www.downstreamtoday.com/news/article.aspx?a_id=23434
- ⁶ California Air Resources Board, <http://www.arb.ca.gov/fuels/lcfs/091307oharelcfs.pdf>
- ⁷ Proceedings of the National Academy of Science, September 14, 2010, Vol. 107 No. 37 16178-16183.
- ⁸ Natural Resources Canada, <http://www.nrcan-rncan.gc.ca/eneene/sources/pripri/aboapr-eng.php>
- ⁹ Perryman Group, http://www.transcanada.com/docs/Key_Projects/Perryman_Group_Nebraska_Report.pdf
http://www.transcanada.com/docs/Key_Projects/TransCanada_US_Report_06-10-10.pdf
- ¹⁰ http://www.nwf.org/global-warming/policy-solutions/climate-and-energy/stop-dirty-fuels/~media/PDFs/Global%20Warming/Tar-Sands/Keystone_XL_Jobs_11-09-10.ashx



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Joyce Graves in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
York County)

1 **Q: Please state your name.**

2 A: My name is Joyce Graves.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in York County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: If you are you married tell us your spouse's name please?**

16 A: Daniel.

EXHIBIT

21

exhibitsticker.com

1 **Q:** For the land that would be affected and impacted by the proposed KXL tar
2 sands pipeline give the Commissioners a sense how long the land has been in
3 your family and a little history of the land.

4 A: This land has been in my family for over 150 years.

5 **Q:** Do you earn any income from this land?

6 A: Yes.

7 **Q:** Have you depended on the income from your land to support your livelihood
8 or the livelihood of your family?

9 A: Yes.

10 **Q:** Have you ever in the past or have you thought about in the future leasing all
11 or a portion of your land in question here?

12 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
13 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
14 all the restrictions and risks and potential negative impacts to farming or ranching
15 operations as opposed to land that did not have those same risks. If I was looking
16 to lease or rent ground I would pay more for comparable non-pipeline land than I
17 would for comparable pipeline land and I think most folks would think the same
18 way. This is another negative economic impact that affects the landowner and the
19 county and the state and will forever and ever should TransCanada's preferred or
20 mainline alternative routes be approved. If they were to twin or closely parallel to
21 Keystone I the vast majority of landowners would be those that already have a
22 pipeline so there would be considerable less new incremental negative impacts.

23 **Q:** Do you have similar concerns about selling the land?

24 A: Well I hope not to have to sell the land in my lifetime but times change and you
25 never know what is around the corner and yes I am concerned that if another piece
26 of ground similar to mine were for sale and it did not have the pipeline and mine
27 did that I would have a lower selling price. I think this would be true for pipeline
28 ground on both the preferred and mainline alternative routes.

29 **Q:** What is your intent with your land after you die?

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director**
7 **previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
15 **incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
18 **property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably**
23 **necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
26 **property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the**
29 **eminent domain property on your land?**

1 A: Yes, they did.

2 Q: **What rights that they proposed to take did they describe?**

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 Q: **Prior to filing an eminent domain lawsuit to take your land that**
12 **TransCanada identified, do you believe they attempted to negotiate in good**
13 **faith with you?**

14 A: No, I do not.

15 Q: **Did TransCanada at any time approach you with or deliver to you their**
16 **proposed easement and right-of-way agreement?**

17 A: Yes, they did.

18 Q: **At the time you reviewed TransCanada’s easement and right-of-way**
19 **agreement, did you understand that they would be purchasing a fee title**
20 **interest in your property or that they were taking something else?**

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 Q: **Is the document included with your testimony here as Attachment No. 2, a**
27 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
28 **Way agreement that they included with their condemnation lawsuit against**
29 **you?**

1 A: Yes, it is.

2 Q: Have you had an opportunity to review TransCanada's proposed Easement
3 and Right-of-Way agreement?

4 A: Yes, I have.

5 Q: What is your understanding of the significance of the Easement and Right-of-
6 Way agreement as proposed by TransCanada?

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
13 agreement do you have any concerns about any portions of it or any of the
14 language either included in the document or missing from the proposed
15 document?

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 Q: I would like you to walk the Commissioners through each and every one of
21 your concerns about TransCanada's proposed Easement and Right-of-Way
22 agreement so they can develop an understanding of how that language and
23 the terms of that contract, in your opinion, potentially negatively impacts you
24 and your land. So, if you can start at the beginning of that document and
25 let's work our way through it, okay?

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 Q: Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
6 percent clear on exactly who could become the owner of about 275 miles of
7 Nebraska land?

8 **A:** No.

9 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
10 percent clear on exactly who will be operating and responsible for
11 approximately 275 miles of tar sands pipeline underneath and through
12 Nebraska land?

13 **A:** No.

14 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
15 and the State of Nebraska of TransCanada's easement terms.

16 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q:** Do you think that type of uncertainty and lack of control over a major piece
26 of infrastructure crossing our State is in the public interest?

27 **A:** No, certainly not, in fact, just the opposite.

28 **Q:** What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 3.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 **A:** The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 **A:** The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative the their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at anytime
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined terms are as follows:

- 27 i. "pipeline installation activities"
- 28 ii. "availability of labor and materials"
- 29 iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: Is Attachment No. 4, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 A: No, they have not.

5 Q: Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 A: No, they have not.

9 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 A: Yes, I am.

12 Q: What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 Q: Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 A: No, they have not.

21 Q: Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 **A:** No, it has not.

7 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q:** **Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q:** **Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q:** **Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

Q: Do you believe the fact that you pay property taxes on your land would be enough to qualify you to have the power of eminent domain to take land of your neighbors or other people in your county, or other people across the state of Nebraska?

A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that I expect an award for or any type of special consideration.

Q: Have you at any time ever employed any person other than yourself?

A: Well, yes I have.

Q: Do you believe that the fact that you have, at some point in your life, employed one or more other persons entitle you to any special treatment or consideration above and beyond any other Nebraskan that has also employed one or more persons?

A: No, of course not.

Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer have at one point employed another person within this state, entitles you to preferential treatment or consideration of any kind?

A: No, of course not. If I choose to employ someone that decision is up to me. I don't deserve any special treatment or consideration for that fact.

Q: Do you have any concerns TransCanada's fitness as an applicant for a major crude oil pipeline in its preferred location, or ultimate location across the state of Nebraska?

A: Yes, I have significant concerns. I am aware of landowners being treated unfairly or even bullied around and being made to feel scared that they did not have any options but to sign whatever papers TransCanada told them they had to. I am aware of folks being threatened that their land would be taken if they didn't follow what TransCanada was saying. I am aware of tactics to get people to sign easements that I don't believe have any place in Nebraska or anywhere such as TransCanada or some outfit associated with it hiring a pastor or priest to pray with landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 **A:** No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 **A:** Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 **A:** The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

ago it would have been hard to imagine all the advances that we have now or how things change. Because the Easement is forever and TransCanada gets the rights in my land forever we have to think with a very long term view. By placing their pipeline on under across and through my land that prevents future development which greatly negatively impacts future taxes and tax revenue that could have been generated by the County and State but now will not. When you look at the short blip of economic activity that the two years of temporary construction efforts may bring, that is far outweighed by the perpetual and forever loss of opportunity and restrictions TransCanada is forcing upon us and Nebraska.

Q: Do you have any concerns about the environmental impact of the proposed pipeline?

A: Yes, I do.

Q: What are some of those concerns?

A: As an affected land owner and Nebraskan, I am concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the environment of my land specifically, as well as the lands near my land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of my land, and the lands near and surrounding the proposed pipeline route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
6 **Application, and as found on Attachment No. 6, here to your testimony, is in**
7 **the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that the Keystone mainline alternative route as shown on**
10 **Attachment No. 6 included with your testimony here is a major oil pipeline**
11 **route that is in the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
14 **of the proposed pipeline within Nebraska as found in Attachment No. 5 to**
15 **your testimony, is in the public interest of Nebraska?**

16 A: No, I do not.

17 **Q: Do you believe there is any potential route for the proposed Keystone XL**
18 **Pipeline across, within, under, or through the State of Nebraska that is in the**
19 **public interest of the citizens of Nebraska?**

20 A: No, I do not.

21 **Q: Why do you hold that belief?**

22 A: Because there simply is no public interest based on all of the factors that I am
23 aware and that I have read and that I have studied that this Commission is to
24 consider that would establish that a for-profit foreign-owned pipeline that simply
25 crosses Nebraska because we are geographically in the way between where tar
26 sands are in Canada to where it wants to ship it to in Texas could ever be in the
27 public interest of Nebraskans. We derive no benefit from this project. It is not for
28 public use. Nebraska is simply in the way and when all considerations are taken in
29 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to my land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross your land?**

28 **A:** No, absolutely not. I am opposed to this project because it is not in the public
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe
10 this project anywhere within Nebraska is within the public interest. However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
14 preferred route and the mainline alternative routes are economic liabilities our
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
18 already exists in that area is reason enough as it is not in our best interest or the
19 public interests to have more major oil pipelines crisscrossing our state. Second,
20 they have all the infrastructure already there in terms of relationships with the
21 counties and local officials and first responders along that route. Third, they have
22 already obtained easements from all the landowners along that route and have
23 relationships with them. Fourth, that route avoids our most sensitive soils, the
24 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
25 Aquifer. Sixth, they have already studied that route and previously offered it as an
26 alternative. Seventh, it just makes the most sense that as a state we would have
27 some intelligent policy of energy corridors and co-locating this type of
28 infrastructure near each other.

1 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
2 **like the Public Service Commissioners to consider in their review of**
3 **TransCanada's Application?**

4 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
5 document below but other things may come to me or my memory may be
6 refreshed and I will add and address those things at the time of the Hearing in
7 August and address any additional items at that time as is necessary. Additionally,
8 I have not had an adequate amount of time to receive and review all of
9 TransCanada's answers to our discovery and the discovery of others so it was
10 impossible to competently and completely react to that in my testimony here and I
11 reserve the right to also address anything related to discovery that has not yet
12 concluded as of the date I signed this document below. Lastly, certain documents
13 requested have not yet been produced by TransCanada and therefore I may have
14 additional thoughts on those I will also share at the hearing as needed.

15 **Q: What is it that you are requesting the Public Service Commissioners do in**
16 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
17 **across Nebraska?**

18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
19 a temporary job spike that this project may bring to a few counties and beyond the
20 relatively small amount of taxes this proposed foreign pipeline would possibly
21 generate. And, instead think about the perpetual and forever impacts of this
22 pipeline as it would have on the landowners specifically, first and foremost, but
23 also thereby upon the entire state of Nebraska, and to determine that neither the
24 preferred route nor the Keystone mainline alternative route are in the public
25 interest of the citizens of the state of Nebraska. And if the Commissioners were
26 inclined to modify TransCanada's proposed routes and were to be inclined to grant
27 an application for a route in Nebraska, that the only potential route that would
28 make any intelligent sense whatsoever would be twinning or near paralleling of
29 the proposed KXL with the existing Keystone I pipeline. It simply does not make

1 sense to add yet another major oil pipeline crisscrossing our state creating new
2 pumping stations, creating new impacts on additional counties and communities
3 and going through all of the court processes with myself and other landowners like
4 me when this applicant already has relationships with the landowners, the towns
5 and the communities along Keystone I, and that Keystone I is firmly outside of the
6 sand hills and a significantly further portion away from the heart of the Ogallala
7 Aquifer than the preferred route or the Keystone mainline alternative route.

8 **Q: Are all of your statements in your testimony provided above true and**
9 **accurate as of the date you signed this document to the best of your**
10 **knowledge?**

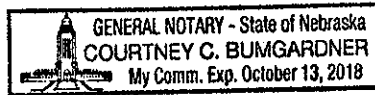
11 **A:** Yes, they are.

12 **Q: Thank you, I have no further questions at this time and reserve the right to**
13 **ask you additional questions at the August 2017 Hearing.**

Joyce Graves
Joyce Graves

Subscribed and Sworn to me before this 26th day of May, 2017.

Courtney C Bumgardner
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act*

Application No: OP-003

Direct Testimony of
Patricia Grosserode in Support of
Landowner Intervenor

State of Nebraska)
) ss.
Boone County)

1 **Q: Please state your name.**

2 A: My name is Patricia Grosserode.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Boone County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

EXHIBIT

22

exhibitsticker.com

1 A: Yes.

2 **Q: How long the land has been in your family?**

3 A: The land was purchased by my family in 1972.

4 **Q: Do you earn any income from this land?**

5 A: Yes.

6 **Q: Have you depended on the income from your land to support your livelihood**
7 **or the livelihood of your family?**

8 A: Yes.

9 **Q: Have you ever in the past or have you thought about in the future leasing all**
10 **or a portion of your land in question here?**

11 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
12 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
13 all the restrictions and risks and potential negative impacts to farming or ranching
14 operations as opposed to land that did not have those same risks. If I was looking
15 to lease or rent ground I would pay more for comparable non-pipeline land than I
16 would for comparable pipeline land and I think most folks would think the same
17 way. This is another negative economic impact that affects the landowner and the
18 county and the state and will forever and ever should TransCanada's preferred or
19 mainline alternative routes be approved. If they were to twin or closely parallel to
20 Keystone I the vast majority of landowners would be those that already have a
21 pipeline so there would be considerable less new incremental negative impacts.

22 **Q: Do you have similar concerns about selling the land?**

23 A: Well I hope not to have to sell the land in my lifetime but times change and you
24 never know what is around the corner and yes I am concerned that if another piece
25 of ground similar to mine were for sale and it did not have the pipeline and mine
26 did that I would have a lower selling price. I think this would be true for pipeline
27 ground on both the preferred and mainline alternative routes.

28 **Q: What is your intent with your land after you die?**

1 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
2 to come but I have thought about getting out if this pipeline were to come through.

3 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
4 **Pipeline would cross the land described above and owned by you?**

5 A: Yes.

6 **Q: Were you or an entity for which you are a member, shareholder, or director**
7 **previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
9 petition for condemnation against our land so it could place its proposed pipeline
10 within an easement that it wanted to take from us on our land.

11 **Q: Did you defend yourself and your land in that condemnation action?**

12 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
13 and expenses in our resistance of TransCanada's lawsuit against us.

14 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees**
15 **incurred?**

16 A: No, they have not.

17 **Q: In its lawsuit against you, did TransCanada identify the amount of your**
18 **property that it wanted to take for its proposed pipeline?**

19 A: The lawsuit against us stated they would take the amount of property that is
20 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
21 and equipment reasonably necessary to operate the pipeline.

22 **Q: Did TransCanada define what they meant by "property that is reasonably**
23 **necessary"?**

24 A: No, they did not.

25 **Q: Did TransCanada in its lawsuit against you, identify the eminent domain**
26 **property portion of your land?**

27 A: Yes, they did.

28 **Q: Did TransCanada describe what rights it proposed to take related to the**
29 **eminent domain property on your land?**

1 A: Yes, they did.

2 Q: What rights that they proposed to take did they describe?

3 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
4 operate, and maintain the pipeline and the plant and equipment reasonably
5 necessary to operate the pipeline, specifically including surveying, laying,
6 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
7 reconstructing, removing and abandoning one pipeline, together with all fittings,
8 cathodic protection equipment, pipeline markers, and all their equipment and
9 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
10 petroleum products, and all by-products thereof.”

11 Q: Prior to filing an eminent domain lawsuit to take your land that
12 TransCanada identified, do you believe they attempted to negotiate in good
13 faith with you?

14 A: No, I do not.

15 Q: Did TransCanada at any time approach you with or deliver to you their
16 proposed easement and right-of-way agreement?

17 A: Yes, they did.

18 Q: At the time you reviewed TransCanada’s easement and right-of-way
19 agreement, did you understand that they would be purchasing a fee title
20 interest in your property or that they were taking something else?

21 A: I understood that they proposed to have the power to take both a temporary
22 construction easement that could last for a certain period of time and then also a
23 permanent easement which they described to be 50 feet across or in width, and
24 that would run the entire portion of my property from where a proposed pipeline
25 would enter my property until where it would exit the property.

26 Q: Is the document included with your testimony here as Attachment No. 3, a
27 true and accurate copy of TransCanada’s proposed Easement and Right-of-
28 Way agreement that they included with their condemnation lawsuit against
29 you?

1 A: Yes, it is.

2 Q: Have you had an opportunity to review TransCanada's proposed Easement
3 and Right-of-Way agreement?

4 A: Yes, I have.

5 Q: What is your understanding of the significance of the Easement and Right-of-
6 Way agreement as proposed by TransCanada?

7 A: My understanding is that this is the document that will govern all of the rights and
8 obligations and duties as well as the limitations of what I can and cannot do and
9 how I and any future landowner and any person I invite to come onto my property
10 must behave as well as what TransCanada is and is not responsible for and how
11 they can use my land.

12 Q: After reviewing TransCanada's proposed Easement and Right-of-Way
13 agreement do you have any concerns about any portions of it or any of the
14 language either included in the document or missing from the proposed
15 document?

16 A: Yes, I have a number of significant concerns and worries about the document and
17 how the language included and the language not included potentially negatively
18 impacts my land and thereby potentially negatively impacts my community and
19 my state.

20 Q: I would like you to walk the Commissioners through each and every one of
21 your concerns about TransCanada's proposed Easement and Right-of-Way
22 agreement so they can develop an understanding of how that language and
23 the terms of that contract, in your opinion, potentially negatively impacts you
24 and your land. So, if you can start at the beginning of that document and
25 let's work our way through it, okay?

26 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
27 Easement and Right-of-Way agreement and how it negatively could affect my
28 property rights and my economic interests.

29 Q: Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow their easement to be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at any time to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"

- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 A: No, they have not.

5 Q: Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 A: No, they have not.

9 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 A: Yes, I am.

12 Q: What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 Q: Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 A: No, they have not.

21 Q: Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 **A:** No, it has not.

7 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q:** **Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q:** **Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q:** **Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

1 **Q:** **Do you believe the fact that you pay property taxes on your land would be**
2 **enough to qualify you to have the power of eminent domain to take land of**
3 **your neighbors or other people in your county, or other people across the**
4 **state of Nebraska?**

5 **A:** **Well, of course not. Like I said, paying property taxes is the law, it's nothing that**
6 **I expect an award for or any type of special consideration.**

7 **Q:** **Have you at any time ever employed any person other than yourself?**

8 **A:** **Well, yes I have.**

9 **Q:** **Do you believe that the fact that you have, at some point in your life,**
10 **employed one or more other persons entitle you to any special treatment or**
11 **consideration above and beyond any other Nebraskan that has also employed**
12 **one or more persons?**

13 **A:** **No, of course not.**

14 **Q:** **Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
15 **have at one point employed another person within this state, entitles you to**
16 **preferential treatment or consideration of any kind?**

17 **A:** **No, of course not. If I choose to employ someone that decision is up to me. I**
18 **don't deserve any special treatment or consideration for that fact.**

19 **Q:** **At the beginning of your statement, you briefly described your property that**
20 **would be impacted by the potential Keystone XL Pipeline. I would like you to**
21 **give the Commissioners a sense of specifically how you believe the proposed**
22 **Keystone XL Pipeline and its preferred route, which proposes to go across**
23 **your land, how it would in your opinion based on your knowledge,**
24 **experience, and background of your land, affect it. So please share with the**
25 **Commissioners the characteristics of your land that you believe is important**
26 **for them to understand, while they evaluate TransCanada's application for a**
27 **route for its proposed pipeline to cross Nebraska and across your land,**
28 **specifically.**

1 A: As a farmer, ownership of land is very important. It is our income, it is our way of
2 life and it is our legacy. The fact that a foreign company such as TransCanada can
3 come through my property and use it for as many years as they want and then do
4 what they will after they are finished with it is inconceivable to me. I think it is a
5 privacy issue that they can come on this land whenever they want even though we
6 still own the land. Land ownership is just that; we own the land.

7 **Q: What else concerns you?**

8 A: I am worried about the leaks. It does happen. It is not a matter of "IF" it will leak
9 but "WHEN". I have a well that is used for water for the center pivot. A leak
10 would damage the water and in turn ruin the crops. A lot of you may think that dirt
11 is just dirt, but soil is one of the most valuable assets a farmer can have. The better
12 & richer the soil is, the better the crops it will produce. Any kind of leak and
13 disruption is unacceptable. This makes me wonder: Who will clean up the leak and
14 make restitution for the lost profits? There are so many things that affect the land
15 which are caused by Mother Nature. Things pertaining to my land should be my
16 decision and not a foreign company taking a piece of my land for their own gain. I
17 am proud to be a farmer.

18 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
19 **crude oil pipeline in its preferred location, or ultimate location across the**
20 **state of Nebraska?**

21 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
22 or even bullied around and being made to feel scared that they did not have any
23 options but to sign whatever papers TransCanada told them they had to. I am
24 aware of folks being threatened that their land would be taken if they didn't follow
25 what TransCanada was saying. I am aware of tactics to get people to sign
26 easements that I don't believe have any place in Nebraska or anywhere such as
27 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
28 landowners and convince them they should sign TransCanada's easement
29 agreements. I am aware of older folks and widows or widowers feeling they had

1 no choice but to sign TransCanada's Easement and they didn't know they could
2 fight or stand up for themselves. From a more practical standpoint, I am worried
3 that according to their answer to our Interrogatory No. 211, TransCanada only
4 owns and operates one (1) major oil pipeline. They simply do not have the
5 experience with this type of pipeline and that scares me. There are others but that
6 is what I can recollect at this time and if I remember more or my recollection is
7 refreshed I will share those with the Commissioners at the Hearing in August.

8 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
9 **landowner is reasonable or just?**

10 **A:** No, I do not.

11 **Q: Do you have any concern about limitations that the construction of this**
12 **proposed pipeline across your affected land would prevent construction of**
13 **future structures upon the portion of your land affected by the proposed**
14 **easement and immediately surrounding areas?**

15 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
16 structures directly across or touching the easement, and it would be unwise and I
17 would be uncomfortable to build anything near the easement for fear of being
18 blamed in the future should any damage or difficulty result on my property in
19 regards to the pipeline.

20 **Q: Do you think such a restriction would impact you economically?**

21 **A:** Well yes, of course.

22 **Q: How do you think such a restriction would impact you economically?**

23 **A:** The future of this land may not be exactly how it's being use as of this moment,
24 and having the restrictions and limiting my ability to develop my land in certain
25 ways presents a huge negative economic impact on myself, my family, and any
26 potential future owner of the property. You have no idea how I or the future own
27 may want to use this land in the future or the other land across Nebraska
28 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
29 ago it would have been hard to imagine all the advances that we have now or how

1 things change. Because the Easement is forever and TransCanada gets the rights in
2 my land forever we have to think with a very long term view. By placing their
3 pipeline on under across and through my land that prevents future development
4 which greatly negatively impacts future taxes and tax revenue that could have
5 been generated by the County and State but now will not. When you look at the
6 short blip of economic activity that the two years of temporary construction efforts
7 may bring, that is far outweighed by the perpetual and forever loss of opportunity
8 and restrictions TransCanada is forcing upon us and Nebraska.

9 **Q: Do you have any concerns about the environmental impact of the proposed**
10 **pipeline?**

11 A: Yes, I do.

12 **Q: What are some of those concerns?**

13 A: As an affected land owner and Nebraskan, I am concerned that any construction,
14 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
15 a detrimental impact upon the environment of my land specifically, as well as the
16 lands near my land and surrounding the proposed pipeline route.

17 **Q: Do you have any other environmental concerns?**

18 A: Yes, of course I am concerned about potential breaches or the pipeline, failures in
19 construction and/or maintenance and operation. I am concerned about spills and
20 leaks that TransCanada has had in the past and will have in the future. This could
21 be catastrophic to my operations or others and to my county and the State.

22 **Q: Do you have any thoughts regarding if there would be an impact upon the**
23 **natural resources on or near your property due to the proposed pipeline?**

24 A: Yes, I believe that any construction, operation, and/or maintenance of the
25 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
26 resources of my land, and the lands near and surrounding the proposed pipeline
27 route.

28 **Q: Do you have any worries about potential impacts from the proposed pipeline**
29 **to the soil of your land, or land near you?**

1 A: Yes, I believe that any construction, operation, and/or maintenance of the
2 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
3 land, as well as land along and surrounding the proposed pipeline route. This
4 includes, but is not limited to, the reasons that we discussed above of disturbing
5 the soil composition and makeup as it has naturally existed for thousands and
6 millions of years during the construction process, and any future maintenance or
7 removal process. I'm gravely concerned about the fertility and the loss of
8 economic ability of my property to grow the crops, or grow the grasses, or grow
9 whatever it is at that time they exist on my property or that I may want to grow in
10 the future, or that a future owner may want to grow. The land will never be the
11 same from as it exists now undisturbed to after it is trenched up for the proposed
12 pipeline.

13 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
14 **upon the groundwater over your land, or surrounding lands?**

15 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
16 the proposed Keystone XL Pipeline would have a detrimental impact upon the
17 groundwater of not only under my land, but also near and surrounding the pipeline
18 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
19 simple and it is simply too valuable to our State and the country to put at
20 unreasonable risk.

21 **Q: Do you have any concern about the potential impact of the proposed pipeline**
22 **upon the surface water on, or near or around your land?**

23 A: Yes, I have significant concerns that any construction, operation, and/or
24 maintenance of the proposed Keystone XL Pipeline would have detrimental
25 impact upon the surface water of not only within my property boundary, but along
26 and near and surrounding the pipeline route, and in fact, across the state of
27 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
6 **Application, and as found on Attachment No. 7, here to your testimony, is in**
7 **the public interest of Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that the Keystone mainline alternative route as shown on**
10 **Attachment No. 7 included with your testimony here is a major oil pipeline**
11 **route that is in the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
14 **in Attachment No. 6 to your testimony, is in the public interest of Nebraska?**

15 A: No, I do not.

16 **Q: Do you believe there is any potential route for the proposed Keystone XL**
17 **Pipeline across, within, under, or through the State of Nebraska that is in the**
18 **public interest of the citizens of Nebraska?**

19 A: No, I do not.

20 **Q: Why do you hold that belief?**

21 A: Because there simply is no public interest based on all of the factors that I am
22 aware and that I have read and that I have studied that this Commission is to
23 consider that would establish that a for-profit foreign-owned pipeline that simply
24 crosses Nebraska because we are geographically in the way between where tar
25 sands are in Canada to where it wants to ship it to in Texas could ever be in the
26 public interest of Nebraskans. We derive no benefit from this project. It is not for
27 public use. Nebraska is simply in the way and when all considerations are taken in
28 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to my land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross your land?**

28 **A:** No, absolutely not. I am opposed to this project because it is not in the public
29 interest, neither within my community nor within our state.

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe
10 this project anywhere within Nebraska is within the public interest. However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
14 preferred route and the mainline alternative routes are economic liabilities our
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
18 already exists in that area is reason enough as it is not in our best interest or the
19 public interests to have more major oil pipelines crisscrossing our state. Second,
20 they have all the infrastructure already there in terms of relationships with the
21 counties and local officials and first responders along that route. Third, they have
22 already obtained easements from all the landowners long that route and have
23 relationships with them. Fourth, that route avoids our most sensitive soils, the
24 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
25 Aquifer. Sixth, they have already studied that route and previously offered it as an
26 alternative. Seventh, it just makes the most sense that as a state we would have
27 some intelligent policy of energy corridors and co-locating this type of
28 infrastructure near each other.

1 **Q: Do you have any other concerns you would like to reiterate or can think of at**
2 **this time you would like the Commissioners to understand?**

3 **A:** Yes. If the pipeline would happen to go through it would greatly affect my ability
4 to make my living. The work on the pipeline would stop any working of the land.
5 Also, we have a center pivot on this land. The amount of land that would be used
6 to put in the pipeline will make us keep reversing the pivot path to work around it.
7 This is an added cost of electricity.

8 Another concern is referencing the erosion of the land. This land is very hilly &
9 dirt can wash away from the pipe. I don't think they are burying it deep enough.

10 When I work the land, I am afraid I will hit the pipe with the disc. At that point,

11 I would be liable for the spill and could lose everything to pay for it.

12 I feel it will be very difficult to produce a crop when the pipe goes as the ground is
13 too hot. Any crop planted here would dry up due to heat from the pipe.

14 In closing, I would rather see that the land be undisturbed. The ground will never
15 be put back like it was & takes years to get it back to the way it was.

16 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
17 **like the Public Service Commissioners to consider in their review of**
18 **TransCanada's Application?**

19 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
20 document below but other things may come to me or my memory may be
21 refreshed and I will add and address those things at the time of the Hearing in
22 August and address any additional items at that time as is necessary. Additionally,
23 I have not had an adequate amount of time to receive and review all of
24 TransCanada's answers to our discovery and the discovery of others so it was
25 impossible to competently and completely react to that in my testimony here and I
26 reserve the right to also address anything related to discovery that has not yet
27 concluded as of the date I signed this document below. Lastly, certain documents
28 requested have not yet been produced by TransCanada and therefore I may have
29 additional thoughts on those I will also share at the hearing as needed.

1 **Q: Does Attachment No. 8 here contain other documents you are competent to**
2 **speak about that you wish to be part of your testimony and to discuss in more**
3 **detail as needed at the August 2017 Hearing?**

4 A: Yes.

5 **Q: What is it that you are requesting the Public Service Commissioners do in**
6 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
7 **across Nebraska?**

8 A: I am respectfully and humbly requesting that the Commissioners think far beyond
9 a temporary job spike that this project may bring to a few counties and beyond the
10 relatively small amount of taxes this proposed foreign pipeline would possibly
11 generate. And, instead think about the perpetual and forever impacts of this
12 pipeline as it would have on the landowners specifically, first and foremost, but
13 also thereby upon the entire state of Nebraska, and to determine that neither the
14 preferred route nor the Keystone mainline alternative route are in the public
15 interest of the citizens of the state of Nebraska. And if the Commissioners were
16 inclined to modify TransCanada's proposed routes and were to be inclined to grant
17 an application for a route in Nebraska, that the only potential route that would
18 make any intelligent sense whatsoever would be twinning or near paralleling of
19 the proposed KXL with the existing Keystone I pipeline. It simply does not make
20 sense to add yet another major oil pipeline crisscrossing our state creating new
21 pumping stations, creating new impacts on additional counties and communities
22 and going through all of the court processes with myself and other landowners like
23 me when this applicant already has relationships with the landowners, the towns
24 and the communities along Keystone I, and that Keystone I is firmly outside of the
25 sand hills and a significantly further portion away from the heart of the Ogallala
26 Aquifer than the preferred route or the Keystone mainline alternative route.

27 **Q: Are all of your statements in your testimony provided above true and**
28 **accurate as of the date you signed this document to the best of your**
29 **knowledge?**

1 A: Yes, they are.

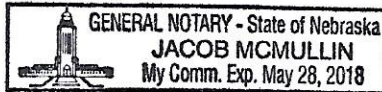
2 **Q: Thank you, I have no further questions at this time and reserve the right to**
3 **ask you additional questions at the August 2017 Hearing.**

Patricia Grosserode
Patricia Grosserode

Subscribed and Sworn to me before this 26th day of May, 2017.

Jacob McMullin
Notary Public

State of Nebraska
County of Lancaster



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Terri Harrington in Support of
Landowner Intervenor**

State of Colorado)
) ss.
Denver County)

1 **Q: Please state your name.**

2 A: My name is Terri Harrington.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in York County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

16 A: I am a lawyer.

EXHIBIT

23

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1 **Q:** Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
2 and or your family?

3 A: Yes.

4 **Q:** For the land that would be affected and impacted by the proposed KXL tar
5 sands pipeline give the Commissioners a sense how long the land has been in
6 your family and a little history of the land.

7 A: My land has been in my family for generations. My family has built a solar clean
8 energy barn on the proposed route. We have had land worked with heavy
9 machinery before and it has always caused it to be much less tillable and
10 productive. The value of my land would be decreased by having all the natural
11 flora and fauna disturbed and the heavy equipment would destroy and compact
12 the soil.

13 **Q:** Do you earn any income from this land?

14 A: Yes.

15 **Q:** Have you depended on the income from your land to support your livelihood
16 or the livelihood of your family?

17 A: Yes.

18 **Q:** Have you ever in the past or have you thought about in the future leasing all
19 or a portion of your land in question here?

20 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
21 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
22 all the restrictions and risks and potential negative impacts to farming or ranching
23 operations as opposed to land that did not have those same risks. If I was looking
24 to lease or rent ground I would pay more for comparable non-pipeline land than I
25 would for comparable pipeline land and I think most folks would think the same
26 way. This is another negative economic impact that affects the landowner and the
27 county and the state and will forever and ever should TransCanada's preferred or
28 mainline alternative routes be approved. If they were to twin or closely parallel to

1 Keystone I the vast majority of landowners would be those that already have a
2 pipeline so there would be considerable less new incremental negative impacts.

3 **Q: Do you have similar concerns about selling the land?**

4 A: Well I hope not to have to sell the land in my lifetime but times change and you
5 never know what is around the corner and yes I am concerned that if another piece
6 of ground similar to mine were for sale and it did not have the pipeline and mine
7 did that I would have a lower selling price. I think this would be true for pipeline
8 ground on both the preferred and mainline alternative routes.

9 **Q: What is your intent with your land after you die?**

10 A: Like I said I hope not to have to sell and I hope that it stay in the family for years
11 to come but I have thought about getting out if this pipeline were to come through.

12 **Q: Are you aware that the preferred route of TransCanada's Keystone XL
13 Pipeline would cross the land described above and owned by you?**

14 A: Yes.

15 **Q: Were you or an entity for which you are a member, shareholder, or director
16 previously sued by TransCanada Keystone Pipeline, LP?**

17 A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
18 petition for condemnation against our land so it could place its proposed pipeline
19 within an easement that it wanted to take from us on our land.

20 **Q: Did you defend yourself and your land in that condemnation action?**

21 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
22 and expenses in our resistance of TransCanada's lawsuit against us.

23 **Q: Has TransCanada reimbursed you for any of your expenses or costs for fees
24 incurred?**

25 A: No, they have not.

26 **Q: In its lawsuit against you, did TransCanada identify the amount of your
27 property that it wanted to take for its proposed pipeline?**

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?

6 A: No, they did not.

7 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?

9 A: Yes, they did.

10 Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?

12 A: Yes, they did.

13 Q: What rights that they proposed to take did they describe?

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?

25 A: No, I do not.

26 Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?

28 A: Yes, they did.

1 **Q:** At the time you reviewed TransCanada's easement and right-of-way
2 agreement, did you understand that they would be purchasing a fee title
3 interest in your property or that they were taking something else?

4 **A:** I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q:** Is the document included with your testimony here as Attachment No. 3, a
10 true and accurate copy of TransCanada's proposed Easement and Right-of-
11 Way agreement that they included with their condemnation lawsuit against
12 you?

13 **A:** Yes, it is.

14 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
15 and Right-of-Way agreement?

16 **A:** Yes, I have.

17 **Q:** What is your understanding of the significance of the Easement and Right-of-
18 Way agreement as proposed by TransCanada?

19 **A:** My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
25 agreement do you have any concerns about any portions of it or any of the
26 language either included in the document or missing from the proposed
27 document?

28 **A:** Yes, I have a number of significant concerns and worries about the document and
29 how the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 **A:** The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
27 revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of about 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow my easement to

1 be transferred or sold to someone or some company or country or who knows what
2 that I don't know and who we may not want to do business with. This pipeline
3 would be a huge asset for TransCanada and if they can sell to the highest bidder
4 that could have terrible impacts upon all of Nebraska depending upon who may
5 buy it and I don't know of any safeguards in place for us or the State to veto or
6 have any say so in who may own, operate, or be responsible for this pipeline in the
7 future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 **A:** No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 **A:** The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 **A:** Yes.

9 **Q: So now on the second page of the Easement what are your concerns?**

10 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 **Q: Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 **Q: What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property are not conducive to the protection of property rights.
17 A shallow pipeline is much more likely to become a danger and liability in the
18 future given farming operations and buried irrigation lines and other factors
19 common to the current typical agricultural uses of the land in question impacted
20 by TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest. As a lawyer I understand the importance of terms, of the fine print of contracts, and there simply must be language that requires TransCanada to pay for any leaks and damage and to remove the pipeline when it is no longer used. They should have to pay dearly for what they are doing. The possibility of contamination is too great to leave it in the ground for our heirs to deal with.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative the their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to an future owner of the Land in question without the ability of the future Landowner to modify or negotiation any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at any time

1 to anyone. This also means that any buyer of the easement could do the same to a
2 third buyer and so on forever. There is no change of control or sale provision in
3 place to protect the Landowner or Nebraska or to provide compensation for such
4 change of control or ownership. It is not conducive to the protection of property
5 rights or economic interests to allow unilateral unrestricted sale of the Easement
6 thereby forcing upon the Landowner and our State a new unknown Easement
7 owner.

8 **Q: What is the next concern you have with the Easement language?**

9 **A:** There are many terms in the Easement that are either confusing or undefined terms
10 that are without context as to whether or not the Landowner would have any say
11 so in determining what these terms mean or if the evaluation is solely in
12 TransCanada's control. Some of these vague undefined terms are as follows:

- 13 i. "pipeline installation activities"
- 14 ii. "availability of labor and materials"
- 15 iii. "commercially reasonable costs and expenses"
- 16 iv. "reasonably anticipated and foreseeable costs and expenses"
- 17 v. "yield loss damages"
- 18 vi. "diminution in the value of the property"
- 19 vii. "substantially same condition"
- 20 viii. "an actual or potential hazard"
- 21 ix. "efficient"
- 22 x. "convenient"
- 23 xi. "endangered"
- 24 xii. "obstructed"
- 25 xiii. "injured"
- 26 xiv. "interfered with"
- 27 xv. "impaired"
- 28 xvi. "suitable crossings"
- 29 xvii. "where rock is encountered"

xviii. “as nearly as practicable”

xix. “pre-construction position”

xx. “pre-construction grade”

xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada’s proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline’s impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: Did TransCanada ever offer you financial compensation for the rights that they sought to obtain in your land, and for what they sought to prevent you and any future land owner of your property from doing in the future?

A: Yes, we received an offer from them.

1 **Q:** As the owner of the land in question and as the person who knows it better
2 than anyone else, do you believe that TransCanada offered you just, or fair,
3 compensation for all of what they proposed to take from you so that their tar
4 sands pipeline could be located across your property?

5 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
6 offer for all the potential impacts and effects and the rights that I'm giving up, and
7 what I will be prevented from doing in the future and how their pipeline would
8 impact my property for ever and ever.

9 **Q:** Has TransCanada at any time offered to compensate you annually, such as
10 wind farm projects do, for the existence of their potential tar sands pipeline
11 across your property.

12 **A:** No, never.

13 **Q:** At any time did TransCanada present you with or request that you, as the
14 owner of the land in question, sign and execute a document called, "Advanced
15 Release of Damage Claims and Indemnity Agreement?"

16 **A:** Yes, they did.

17 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
18 "Advanced Release of Damage Claims and Indemnity Agreement?"

19 **A:** Yes, it is.

20 **Q:** What was your understanding of that document?

21 **A:** When I read that document in the plain language of that document, it was my
22 understanding that TransCanada was attempting to pay me a very small amount at
23 that time in order for me to agree to give up my rights to be compensated from
24 them in the future related to any damage or impact they may have upon my
25 property "arising out of, in connection with, or alleged to resulted from
26 construction or surveying over, under or on" my land.

27 **Q:** Did you ever sign that document?

28 **A:** No, I did not.

29 **Q:** Why not?

1 A: Because I do not believe that it is fair or just to try to get me to agree to a small
2 sum of money when I have no idea how bad the impacts or damages that they, or
3 their contractors, or subcontractors, or other agents or employees, may cause on
4 my land at any time in the future that resulted from the construction or surveying
5 or their activities upon my land.

6 **Q: When you reviewed this document, what did it make you feel?**

7 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
8 shield themselves against known and foreseeable impacts that their pipeline, and
9 the construction of it, would have upon my land. It made me feel that they knew it
10 was in their financial interest to pay me as little as possible to prevent me from
11 ever having the opportunity to seek fair compensation again, and that this must be
12 based upon their experience of unhappy landowners and situations in other places
13 where they have built pipelines.

14 **Q: Has TransCanada ever contacted you and specifically asked you if you**
15 **thought their proposed location of their proposed pipeline across your land**
16 **was in your best interest?**

17 A: No, they have not.

18 **Q: Has TransCanada ever contacted you and specifically asked you if you**
19 **thought their proposed location of their proposed pipeline across your land**
20 **was in the public interest of the State of Nebraska?**

21 A: No, they have not.

22 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
23 **Takings Clause?**

24 A: Yes, I am.

25 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
26 **an American citizens property?**

27 A: My understanding is that, according to the United States Constitution, that if the
28 government is going to take land for public use, then in that case, or by taking for

1 public use, it can only occur if the private land owner is compensated justly, or
2 fairly.

3 **Q:** Has TransCanada ever contacted you specially to explain the way in which
4 the public could use its proposed Keystone XL Pipeline?

5 **A:** No, they have not.

6 **Q:** Can you think of any way in which the public, that is the citizens of the State
7 of Nebraska, can directly use the proposed TransCanada Keystone XL
8 Pipeline, as it dissects the State of Nebraska?

9 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
10 public benefits from this pipeline in any way, how they can use it any way, or how
11 it's in the public interest in any way. By looking at the map, it is quite clear to me
12 that the only reason it's proposed to come through Nebraska, is that because we
13 are geographically in the way from between where the privately-owned Tar Sands
14 are located to where TransCanada wants to ship the Tar Sands to refineries in
15 Houston, Texas.

16 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
17 crude petroleum, or oil and petroleum by-products that you would like to
18 ship in its pipeline?

19 **A:** No, it has not.

20 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
21 products that you, at this time or any time in the future, would desire to place
22 for transport within the proposed TransCanada Keystone XL Pipeline?

23 **A:** No, I do not.

24 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
25 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
26 products within the proposed TransCanada Keystone XL Pipeline?

27 **A:** No, I do not. I've never heard of such a person or company like that.

28 **Q:** Do you pay property taxes for the land that would be affected and impacted
29 at the proposed TransCanada Keystone XL Pipeline?

1 A: Yes, I do.

2 **Q: Why do you pay property taxes on that land?**

3 A: Because that is the law. The law requires us to pay the property taxes as the owner
4 of that property.

5 **Q: Because you follow the law and pay property taxes, do you believe you**
6 **deserve any special consideration or treatment apart from any other person**
7 **or company that pays property taxes?**

8 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
9 just what you do.

10 **Q: Do you believe the fact that you pay property taxes entitles you to special**
11 **treatment of any kind, or special rights of any kind?**

12 A: No, of course not.

13 **Q: Do you believe the fact that you pay property taxes on your land would be**
14 **enough to qualify you to have the power of eminent domain to take land of**
15 **your neighbors or other people in your county, or other people across the**
16 **state of Nebraska?**

17 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
18 I expect an award for or any type of special consideration.

19 **Q: Have you at any time ever employed any person other than yourself?**

20 A: Well, yes I have.

21 **Q: Do you believe that the fact that you have, at some point in your life,**
22 **employed one or more other persons entitle you to any special treatment or**
23 **consideration above and beyond any other Nebraskan that has also employed**
24 **one or more persons?**

25 A: No, of course not.

26 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
27 **have at one point employed another person within this state, entitles you to**
28 **preferential treatment or consideration of any kind?**

1 A: No, of course not. If I choose to employ someone that decision is up to me. I
2 don't deserve any special treatment or consideration for that fact.

3 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
4 **crude oil pipeline in its preferred location, or ultimate location across the**
5 **state of Nebraska?**

6 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
7 or even bullied around and being made to feel scared that they did not have any
8 options but to sign whatever papers TransCanada told them they had to. I am
9 aware of folks being threatened that their land would be taken if they didn't follow
10 what TransCanada was saying. I am aware of tactics to get people to sign
11 easements that I don't believe have any place in Nebraska or anywhere such as
12 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
13 landowners and convince them they should sign TransCanada's easement
14 agreements. I am aware of older folks and widows or widowers feeling they had
15 no choice but to sign TransCanada's Easement and they didn't know they could
16 fight or stand up for themselves. From a more practical standpoint, I am worried
17 that according to their answer to our Interrogatory No. 211, TransCanada only
18 owns and operates one (1) major oil pipeline. They simply do not have the
19 experience with this type of pipeline and that scares me. There are others but that
20 is what I can recollect at this time and if I remember more or my recollection is
21 refreshed I will share those with the Commissioners at the Hearing in August.

22 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
23 **landowner is reasonable or just?**

24 A: No, I do not.

25 **Q: Do you have any concern about limitations that the construction of this**
26 **proposed pipeline across your affected land would prevent construction of**
27 **future structures upon the portion of your land affected by the proposed**
28 **easement and immediately surrounding areas?**

1 A: Well yes, of course I do. We would not be able to build many, if any, types of
2 structures directly across or touching the easement, and it would be unwise and I
3 would be uncomfortable to build anything near the easement for fear of being
4 blamed in the future should any damage or difficulty result on my property in
5 regards to the pipeline.

6 **Q: Do you think such a restriction would impact you economically?**

7 A: Well yes, of course.

8 **Q: How do you think such a restriction would impact you economically?**

9 A: The future of this land may not be exactly how it's being used as of this moment,
10 and having the restrictions and limiting my ability to develop my land in certain
11 ways presents a huge negative economic impact on myself, my family, and any
12 potential future owner of the property. You have no idea how I or the future owner
13 may want to use this land in the future or the other land across Nebraska
14 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
15 ago it would have been hard to imagine all the advances that we have now or how
16 things change. Because the Easement is forever and TransCanada gets the rights in
17 my land forever we have to think with a very long term view. By placing their
18 pipeline on under across and through my land that prevents future development
19 which greatly negatively impacts future taxes and tax revenue that could have
20 been generated by the County and State but now will not. When you look at the
21 short blip of economic activity that the two years of temporary construction efforts
22 may bring, that is far outweighed by the perpetual and forever loss of opportunity
23 and restrictions TransCanada is forcing upon us and Nebraska.

24 **Q: Do you have any concerns about the environmental impact of the proposed**
25 **pipeline?**

26 A: Yes, I do.

27 **Q: What are some of those concerns?**

28 A: As an affected land owner and Nebraskan, I am concerned that any construction,
29 operation, and/or maintenance of the proposed Keystone XL Pipeline would have

1 a detrimental impact upon the environment of my land specifically, as well as the
2 lands near my land and surrounding the proposed pipeline route.

3 **Q: Do you have any other environmental concerns?**

4 **A:** Yes, of course I am concerned about potential breaches of the pipeline, failures in
5 construction and/or maintenance and operation. I am concerned about spills and
6 leaks that TransCanada has had in the past and will have in the future. This could
7 be catastrophic to my operations or others and to my county and the State.

8 **Q: Do you have any thoughts regarding if there would be an impact upon the**
9 **natural resources on or near your property due to the proposed pipeline?**

10 **A:** Yes, I believe that any construction, operation, and/or maintenance of the
11 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
12 resources of my land, and the lands near and surrounding the proposed pipeline
13 route.

14 **Q: Do you have any worries about potential impacts from the proposed pipeline**
15 **to the soil of your land, or land near you?**

16 **A:** Yes, I believe that any construction, operation, and/or maintenance of the
17 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
18 land, as well as land along and surrounding the proposed pipeline route. This
19 includes, but is not limited to, the reasons that we discussed above of disturbing
20 the soil composition and makeup as it has naturally existed for thousands and
21 millions of years during the construction process, and any future maintenance or
22 removal process. I'm gravely concerned about the fertility and the loss of
23 economic ability of my property to grow the crops, or grow the grasses, or grow
24 whatever it is at that time they exist on my property or that I may want to grow in
25 the future, or that a future owner may want to grow. The land will never be the
26 same from as it exists now undisturbed to after it is trenched up for the proposed
27 pipeline.

28 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
29 **upon the groundwater over your land, or surrounding lands?**

1 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
2 the proposed Keystone XL Pipeline would have a detrimental impact upon the
3 groundwater of not only under my land, but also near and surrounding the pipeline
4 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
5 simple and it is simply too valuable to our State and the country to put at
6 unreasonable risk.

7 **Q: Do you have any concern about the potential impact of the proposed pipeline**
8 **upon the surface water on, or near or around your land?**

9 A: Yes, I have significant concerns that any construction, operation, and/or
10 maintenance of the proposed Keystone XL Pipeline would have detrimental
11 impact upon the surface water of not only within my property boundary, but along
12 and near and surrounding the pipeline route, and in fact, across the state of
13 Nebraska.

14 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
15 **upon the wildlife and plants, other than your growing crops on or near your**
16 **land?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 wildlife and the plants, not only that are located on or can be found upon my land,
20 but also near and along the proposed pipeline route.

21 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
22 **fair market value of your land?**

23 A: Yes, I do. I am significantly concerned about how the existence of the proposed
24 pipeline underneath and across and through my property will negatively affect the
25 fair market value at any point in the future, especially at that point in which I
26 would need to sell the property, or someone in my family would need to sell the
27 property. I do not believe, and certainly would not be willing to pay, the same
28 price for land that had the pipeline located on it, versus land that did not. I hope
29 there is never a point where I'm in a position where I have to sell and have to

1 realize as much value as I can out of my land. But because it is my single largest
2 asset, I'm gravely concerned that the existence of the proposed Keystone XL
3 Pipeline upon my land will affect a buyer's willingness to pay as much as they
4 would've paid and as much as I could've received, if the pipeline were not upon
5 my property. There are just too many risks, unknowns, impacts and uncertainties,
6 not to mention all of the rights you give up by the nature of having the pipeline
7 due to having the easement that we have previously discussed, for any reasonable
8 person to think that the existence of the pipeline would not negatively affect my
9 property's value.

10 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
11 **testimony?**

12 A: Yes, I have.

13 **Q: Where have you seen that before?**

14 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
15 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
16 believe the portion of the alternative route in Nebraska essentially twins or
17 parallels Keystone I.

18 **Q: Do you believe the I-90 corridor alternative route, specifically for the portion**
19 **of the proposed pipeline within Nebraska as found in Attachment No. 6 to**
20 **your testimony, is in the public interest of Nebraska?**

21 A: No, I do not.

22 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
23 **Application, and as found on Attachment No. 7, here to your testimony, is in**
24 **the public interest of Nebraska?**

25 A: No, I do not.

26 **Q: Do you believe that the Keystone mainline alternative route as shown on**
27 **Attachment No. 7 included with your testimony here is a major oil pipeline**
28 **route that is in the public interest of Nebraska?**

29 A: No, I do not.

Q: Do you believe there is any potential route for the proposed Keystone XL Pipeline across, within, under, or through the State of Nebraska that is in the public interest of the citizens of Nebraska?

A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted
2 were determined to be a minute fraction of the permanent jobs that had been
3 projected. According to their answer to our Interrogatory No. 191, TransCanada
4 has created only thirty-four (34) jobs within Nebraska working specifically on
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
7 Further, according to their answer to Interrogatory No. 199, TransCanada would
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
9 constructed on its Preferred Route or its Mainline Alternative Route.

10 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
11 **because it would cross your land?**

12 A: No, absolutely not. I am opposed to this project because it is not in the public
13 interest, neither within my community nor within our state.

14 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
15 **was to cross someone else's land?**

16 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
17 the fear and anxiety and potential foreseeable risks and negative impacts that this
18 type of a project carrying this type of product brings foisted upon anyone in this
19 state or any other state.

20 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
21 **Pipeline to cross the state of Nebraska?**

22 A: I don't believe there is an intelligent route because as I have stated I don't believe
23 this project anywhere within Nebraska is within the public interest. However, if
24 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
25 had to go somewhere in the state of Nebraska, the only intelligent route I believe
26 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
27 preferred route and the mainline alternative routes are economic liabilities our
28 state cannot risk.

29 **Q: What do you rely upon to make that statement?**

1 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
2 already exists in that area is reason enough as it is not in our best interest or the
3 public interests to have more major oil pipelines crisscrossing our state. Second,
4 they have all the infrastructure already there in terms of relationships with the
5 counties and local officials and first responders along that route. Third, they have
6 already obtained easements from all the landowners along that route and have
7 relationships with them. Fourth, that route avoids our most sensitive soils, the
8 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
9 Aquifer. Sixth, they have already studied that route and previously offered it as an
10 alternative. Seventh, it just makes the most sense that as a state we would have
11 some intelligent policy of energy corridors and co-locating this type of
12 infrastructure near each other.

13 **Q: Do you have any other concerns you would like to reiterate or can think of at**
14 **this time you would like the Commissioners to understand?**

15 A: Yes. I would never buy land with a pipeline running under it. You could never
16 have underground sprinklers or irrigation which may be the wave of the future.
17 We could never put a home on the land because we can't excavate so it stops us
18 from freely using the land as we might wish to in the future. My heirs will be
19 affected for many decades to come and in a manner that is not even foreseeable at
20 present. Dirty oil flowing under my land and the contamination of the land by
21 putting something completely unnatural under the soil and then having it placed
22 right above the valuable and pristine Ogallala aquifer decreases the value of my
23 land. It is my understanding that pipelines leak and leak without detection many
24 times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

25 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
26 **like the Public Service Commissioners to consider in their review of**
27 **TransCanada's Application?**

28 A: No, I have not. I have shared that which I can think of as of the date I signed this
29 document below but other things may come to me or my memory may be

1 refreshed and I will add and address those things at the time of the Hearing in
2 August and address any additional items at that time as is necessary. Additionally,
3 I have not had an adequate amount of time to receive and review all of
4 TransCanada's answers to our discovery and the discovery of others so it was
5 impossible to competently and completely react to that in my testimony here and I
6 reserve the right to also address anything related to discovery that has not yet
7 concluded as of the date I signed this document below. Lastly, certain documents
8 requested have not yet been produced by TransCanada and therefore I may have
9 additional thoughts on those I will also share at the hearing as needed.

10 **Q: What is it that you are requesting the Public Service Commissioners do in**
11 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
12 **across Nebraska?**

13 A: I am respectfully and humbly requesting that the Commissioners think far beyond
14 a temporary job spike that this project may bring to a few counties and beyond the
15 relatively small amount of taxes this proposed foreign pipeline would possibly
16 generate. And, instead think about the perpetual and forever impacts of this
17 pipeline as it would have on the landowners specifically, first and foremost, but
18 also thereby upon the entire state of Nebraska, and to determine that neither the
19 preferred route nor the Keystone mainline alternative route are in the public
20 interest of the citizens of the state of Nebraska. And if the Commissioners were
21 inclined to modify TransCanada's proposed routes and were to be inclined to grant
22 an application for a route in Nebraska, that the only potential route that would
23 make any intelligent sense whatsoever would be twinning or near paralleling of
24 the proposed KXL with the existing Keystone I pipeline. It simply does not make
25 sense to add yet another major oil pipeline crisscrossing our state creating new
26 pumping stations, creating new impacts on additional counties and communities
27 and going through all of the court processes with myself and other landowners like
28 me when this applicant already has relationships with the landowners, the towns
29 and the communities along Keystone I, and that Keystone I is firmly outside of the

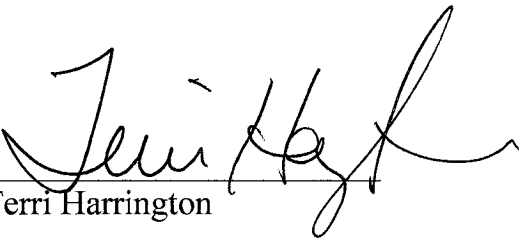
1 sand hills and a significantly further portion away from the heart of the Ogallala

2 Aquifer than the preferred route or the Keystone mainline alternative route.


3 **Q: Are all of your statements in your testimony provided above true and**
4 **accurate as of the date you signed this document to the best of your**
5 **knowledge?**

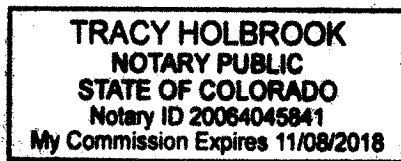
6 **A: Yes, they are.**

7 **Q: Thank you, I have no further questions at this time and reserve the right to**
8 **ask you additional questions at the August 2017 Hearing.**


Terri Harrington

Subscribed and Sworn to me before this 29th day of May, 2017.


Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Rick Hammond in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
York County)

1 **Q: Please state your name.**

2 A: My name is Rick Hammond.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: No, but I am a tenant of Terri Harrington who is a Landowner Intervenor and my
7 sister-in-law. I farm her land that would be affected by the proposed preferred
8 pipeline route of TransCanada. Her land is located in York County.

9 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
10 **photo(s) of the land in question here with the area of the proposed KXL**
11 **pipeline depicted?**

12 A: Yes.

13 **Q: What do you do for a living?**

14 A: I am Farmer.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

EXHIBIT

24

exhibitsticker.com

1 A: Yes.

2 **Q: For the land that would be affected and impacted by the proposed KXL tar**
3 **sands pipeline give the Commissioners a sense how long the land has been in**
4 **your family.**

5 **A:** The land has been in my wife's family for generations. Collectively, we built a
6 solar clean energy barn on the proposed route. We have had land worked with
7 heavy machinery before and it has always caused it to be much less tillable and
8 productive. The value of the land would be decreased by having all the natural
9 flora and fauna disturbed and the heavy equipment would destroy and compact the
10 soil.

11 **Q: Do you earn any income from this land?**

12 A: Yes.

13 **Q: Have you depended on the income from the land to support your livelihood or**
14 **the livelihood of your family?**

15 A: Yes.

16 **Q: Do you have concerns about your sister-in-law being able to selling the land?**

17 A: Well I hope she never has to sell the land but as a farmer who has bought land
18 before and attended auctions and who is familiar with what factors you consider
19 when bidding on farm land, I am concerned that if another piece of ground similar
20 to hers was for sale at the same time and it did not have the pipeline and hers did
21 that she would have a lower selling price. I think this would be true for pipeline
22 ground on both the preferred and mainline alternative routes.

23 **Q: Have you thought about whether or not you would be willing to pay the same**
24 **rental payments for the land if the proposed route is approve and the KXL**
25 **pipeline goes through the land as you are today without it?**

26 **A:** Yes, I have thought of it and that concerns me. The owner is my sister-in-law
27 which makes that even more difficult but as a business owner and farmer I have to
28 also control my costs and risks the best I can. For instance, if there are damages to
29 crops and loss in yields, I need to take that real possibility into account. I need to

1 factor in the likelihood of deferred payment or no payment or even budgeting in
2 legal expenses to fight about damages caused by the pipeline. These are all real
3 world things that have and do occur. I just don't know if I could agree to carry on
4 with the same payment arrangements if the land were to change so dramatically as
5 it would if a major oil pipeline is present.

6 **Q: Was your sister-in-law or an entity for which she is a member, shareholder,**
7 **or director previously sued by TransCanada Keystone Pipeline, LP?**

8 A: Yes, in 2015. TransCanada Keystone Pipeline LP sued her by filing a petition for
9 condemnation against her land so it could place its proposed pipeline within an
10 easement that it wanted to take from her.

11 **Q: Did she defend herself and the land in that condemnation action?**

12 A: Yes. She hired lawyers to defend and protect us and we helped with the legal fees
13 and expenses actually incurred in her and our collective resistance of
14 TransCanada's lawsuit.

15 **Q: Has TransCanada reimbursed her or you for any of the expenses or costs for**
16 **fees incurred?**

17 A: No, they have not.

18 **Q: Did TransCanada describe what rights it proposed to take related to the**
19 **eminent domain property on the land?**

20 A: Yes, they did.

21 **Q: What rights that they proposed to take did they describe?**

22 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
23 operate, and maintain the pipeline and the plant and equipment reasonably
24 necessary to operate the pipeline, specifically including surveying, laying,
25 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
26 reconstructing, removing and abandoning one pipeline, together with all fittings,
27 cathodic protection equipment, pipeline markers, and all their equipment and
28 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
29 petroleum products, and all by-products thereof."

1 **Q:** Prior to filing an eminent domain lawsuit, do you believe TransCanada
2 attempted to negotiate in good faith?

3 **A:** No, I do not.

4 **Q:** Have you ever reviewed TransCanada's proposed easement and right-of-way
5 agreement?

6 **A:** Yes.

7 **Q:** At the time you reviewed TransCanada's easement and right-of-way
8 agreement, did you understand that they would be purchasing a fee title
9 interest in the property or that they were taking something else?

10 **A:** I understood that they proposed to have the power to take both a temporary
11 construction easement that could last for a certain period of time and then also a
12 permanent easement which they described to be 50 feet across or in width, and
13 that would run the entire portion of the property from where a proposed pipeline
14 would enter the property until where it would exit the property.

15 **Q:** Is the document included with your testimony here as Attachment No. 3, a
16 true and accurate copy of TransCanada's proposed Easement and Right-of-
17 Way agreement that they included with their condemnation lawsuit?

18 **A:** Yes, it is.

19 **Q:** What is your understanding of the significance of the Easement and Right-of-
20 Way agreement as proposed by TransCanada?

21 **A:** My understanding is that this is the document that will govern all of the rights and
22 obligations and duties as well as the limitations of what can and cannot be done
23 and how I and any future landowner and any person I invite to come onto the
24 property must behave as well as what TransCanada is and is not responsible for
25 and how they can use the land.

26 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
27 agreement do you have any concerns about any portions of it or any of the
28 language either included in the document or missing from the proposed
29 document?

1 A: Yes, I have a number of significant concerns and worries about the document and
2 how the language included and the language not included potentially negatively
3 impacts the land, my rights, and thereby potentially negatively impacts my
4 community and my state.

5 **Q: I would like you to walk the Commissioners through each and every one of**
6 **your concerns about TransCanada's proposed Easement and Right-of-Way**
7 **agreement so they can develop an understanding of how that language and**
8 **the terms of that contract, in your opinion, potentially negatively impacts you**
9 **and the land. So, if you can start at the beginning of that document and let's**
10 **work our way through it, okay?**

11 A: Yes, I'll be happy to express my concerns about TransCanada's proposed
12 Easement and Right-of-Way agreement and how it negatively could affect the
13 property rights and my economic interests.

14 **Q. Okay, let's start with your first concern please.**

15 A: The very first sentence talks about consideration or how much money they will
16 pay to compensate for all of the known and unknown affects and all of the rights
17 being given up and for all the things they get to do to the land and for what they
18 will prevent us from doing on the land and they only will pay a one time at the
19 signing of the easement agreement. That is a huge problem.

20 **Q: Explain to the Commissioners why that is a problem.**

21 A: It is not fair to the landowner, the county, or the State. It is not fair to the
22 landowner because they want to have the land forever for use as they see fit so
23 they can make a daily profit from their customers. As a tenant, I lease the ground
24 and I pay twice a year every year so periodically and annually. That only makes
25 sense – that is fair. If I was going to rent a house in town I would typically pay
26 monthly, every month until I gave up my right to use that house. By TransCanada
27 getting out on the cheap and paying once in today's dollars that is monthly, bi-
28 annual, or at least an annual loss in tax revenue collection on the money Terri
29 would be paid and then pay taxes on and contribute to this state and this country. It

1 is money she would be putting back into the local community both spending and
2 stimulating the local economy and generating more economic activity right here.
3 Instead TransCanada's shareholders keep the money and it never finds its way to
4 Nebraska.

5 **Q: What is your next concern?**

6 **A:** The first paragraph goes on to say Grantor, which is the landowner, "does hereby
7 grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited
8 partnership..." and I have no idea who that really is. I have no idea who is forcing
9 this pipeline on us or who the owners of the entities are, or what are the assets
10 backing this limited partnership, or who the general partner is, or who all the
11 limited partners are, and who makes up the ownership of the these partners or the
12 structure or any of the basic things you would want to know and understand if you
13 would want to do business with such an outfit. According to TransCanada's
14 answer to Interrogatory No. 28, as of the date I signed this testimony, a limited
15 liability company called TransCanada Keystone Pipeline GP, LLC is the general
16 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
17 basically nothing. That is really scary since the general partner has the liability but
18 virtually none of the ownership and who knows if it has any other assets.

19 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
20 **percent clear on exactly who could become the owner of about 275 miles of**
21 **Nebraska land?**

22 **A:** No.

23 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
24 **percent clear on exactly who will be operating and responsible for**
25 **approximately 275 miles of tar sands pipeline underneath and through**
26 **Nebraska land?**

27 **A:** No.

28 **Q: Okay, let's continue please with your concerns of the impacts upon the land**
29 **and the State of Nebraska of TransCanada's easement terms.**

1 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
2 called "Grantee")..." and this concerns me because it would allow the easement to
3 be transferred or sold to someone or some company or country or who knows what
4 that we don't know and who we may not want to do business with. This pipeline
5 would be a huge asset for TransCanada and if they can sell to the highest bidder
6 that could have terrible impacts upon all of Nebraska depending upon who may
7 buy it and I don't know of any safeguards in place for us or the State to veto or
8 have any say so in who may own, operate, or be responsible for this pipeline in the
9 future.

10 Q: **Do you think that type of uncertainty and lack of control over a major piece
11 of infrastructure crossing our State is in the public interest?**

12 A: No, certainly not, in fact, just the opposite.

13 Q: **What's next?**

14 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
15 really concerns me. Why does the easement and right-of-way have to be perpetual
16 and permanent? That is the question myself and my family want an answer to.
17 Perpetual to me is forever and that doesn't make sense.

18 Q: **Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

19 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
20 data proving there is a perpetual supply of tar sands. I am not aware in
21 TransCanada's application where it proves there is a perpetual necessity for this
22 pipeline. My understanding of energy infrastructure like wind towers is they have
23 a decommission plan and actually take the towers down when they become
24 obsolete or no longer needed. Nothing manmade lasts forever. The land however
25 will, if we are all smart about this, and I want my family or future Nebraska
26 families to have that land as undisturbed as possible and it is not in my interest or
27 the public interest of Nebraska to be forced to give up perpetual and permanent
28 rights in the land for this specific kind of pipeline project.

29 Q: **Okay, what is your next concern?**

1 A: The easement language includes all these things TransCanada can do and it says
2 "...abandoning in place..." so they can just leave this pipeline under the ground
3 until the end of time just sitting there while they are not using it, but we are still
4 prevented from doing on the land and using the land as we would like. If I owned
5 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
6 there. It doesn't make sense and it scares me and it is not in our interest or the
7 public interest of Nebraska to allow this.

8 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
9 **right?**

10 A: Yes.

11 **Q: So now on the second page of the Easement what are your concerns?**

12 A: Here the Easement identifies a 24-month deadline to complete construction of the
13 pipeline but has caveats that are undefined and ambiguous. The 24-month period
14 starts to run from the moment "actual pipeline installation activities" begin on
15 Landowners property. It appears that TransCanada would define this phrase as
16 needed. It would be wise to explain what types of TransCanada action constitutes
17 "installation activity" For instance, would the placement and storage of an
18 excavator or other equipment on or near the Easement property be an activity or
19 would earth have to be moved before the activity requirement is triggered. This
20 vague phrase is likely to lead to future disputes and litigation that is not in the best
21 interest of the welfare of Nebraska and would not protect property interests. The
22 24-months can also be extended in the case of "force majeure." My understanding
23 is that force majeure is often used to insulate a party to a contract when events
24 occur that are completely out of their control. In TransCanada's easement this is
25 expanded to include "without limitation...availability of labor and materials."
26 Extending this language to labor and materials is problematic because these are
27 two variables that TransCanada does have some or significant control over and to
28 allow extension of the 24-month period over events not truly out of the control of

1 TransCanada and without further provision for compensation for the Landowner is
2 not conducive to protection of property rights.

3 **Q: Okay, what is your next concern?**

4 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
5 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
6 reasonable costs and expenses” will pay for damages caused but then limits
7 TransCanada’s liability to certain circumstances. There is no definition of
8 “commercially reasonable” and no stated right that the Landowner would get to
9 determine the amounts of cost or expense that is “commercially reasonable.”
10 TransCanada excepts out from their liability any damages that are caused by
11 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
12 Landowner. It is understandable that in Landowner were to willfully and
13 intentionally cause damages to the pipeline that Landowner should be liable.
14 However, anything short of willful misconduct should be the liability of
15 TransCanada who is subjecting the pipeline on the Landowner and who is making
16 a daily profit from that pipeline. When evaluating the impact on property rights of
17 this provision, you must consider the potentially extremely expensive fight a
18 Landowner would have over this question of whether or not damage was an act of
19 negligence. Putting this kind of potential liability upon the Landowner is
20 incredibly problematic and is detrimental to the protection of property rights. I
21 don’t think this unilateral power which I can’t do anything about as the landowner
22 is in the best economic interest of the land in question or the State of Nebraska for
23 landowners to be treated that way.

24 **Q: Is there any specific event or example you are aware of that makes this**
25 **concern more real for you?**

26 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
27 Nemaha County, Nebraska landowner farmers who accidently struck two
28 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
29 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged

negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether

1 during growing season or not, to travel “within and along Easement Area on foot
2 or in vehicle or machinery...” Further at TransCanada’s sole discretion it will
3 retain the rights to prevent any landowner activity that it thinks may “unreasonably
4 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
5 undefined and unilateral restrictions are not conducive to the protection of
6 property rights or economic interest.

7 **Q: What is the next concern you have with the Easement language?**

8 **A:** The Easement allows TransCanada sole discretion to burn or chip or bury under
9 Landowner’s land any debris of any kind without any input or power of
10 Landowner to demand an alternative method or location of debris disposal. Such
11 unilateral powers would negatively affect Landowners property are not conducive
12 to the protection of property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 **A:** Again, undefined terms leave a lot of room for confusion. What does the phrase
15 “where rock is encountered” mean and why does TransCanada solely get to
16 determine whether or not this phrase is triggered. This phrase could be used to
17 justify installing the pipeline 24 inches beneath the surface. The ability to use this
18 provision to minimal locate the pipeline at a depth of 24 inches could negatively
19 affect Landowners property are not conducive to the protection of property rights.
20 A shallow pipeline is much more likely to become a danger and liability in the
21 future given farming operations and buried irrigation lines and other factors
22 common to the current typical agricultural uses of the land in question impacted
23 by TransCanada’s preferred pipeline route.

24 **Q: What is the next concern you have with the Easement language?**

25 **A:** There are more vague concepts solely at the determination of TransCanada such as
26 “as nearly as practicable” and “pre-construction position” and “extent reasonably
27 possible.” There is nothing here that defines this or provides a mechanism for
28 documenting or memorializing “pre-construction position” so as to minimize
29 costly legal battles or wasted Landowner time attempting to recreate the soil

condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest. As a lawyer I understand the importance of terms, of the fine print of contracts, and there simply must be language that requires TransCanada to pay for any leaks and damage and to remove the pipeline when it is no longer used. They should have to pay dearly for what they are doing. The possibility of contamination is too great to leave it in the ground for our heirs to deal with.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative the their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiation any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"

xv. "impaired"

xvi. "suitable crossings"

xvii. "where rock is encountered"

xviii. "as nearly as practicable"

xix. "pre-construction position"

xx. "pre-construction grade"

xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you or the land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: As the farmer of the land in question and as the person who knows it better than anyone else, do you believe that TransCanada offered a just, or fair,

1 compensation for all of what they proposed to take so that their tar sands
2 pipeline could be located across the property?

3 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
4 offer for all the potential impacts and effects and the rights that are being given up,
5 and what will be prevented from doing in the future and how their pipeline would
6 impact the property forever and ever.

7 Q: Has TransCanada at any time offered annual compensation, such as wind
8 farm projects do, for the existence of their potential tar sands pipeline across
9 the property.

10 A: No, never.

11 Q: Has TransCanada ever contacted you and specifically asked you if you
12 thought their proposed location of their proposed pipeline across the land was
13 in your best interest?

14 A: No, they have not.

15 Q: Has TransCanada ever contacted you and specifically asked you if you
16 thought their proposed location of their proposed pipeline across the land was
17 in the public interest of the State of Nebraska?

18 A: No, they have not.

19 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
20 Takings Clause?

21 A: Yes, I am.

22 Q: What is your understanding of the Fifth Amendment as it relates to taking of
23 an American citizens property?

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 Q: Has TransCanada ever contacted you specially to explain the way in which
29 the public could use its proposed Keystone XL Pipeline?

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Have you at any time ever employed any person other than yourself?

25 A: Well, yes I have.

26 Q: Do you believe that the fact that you have, at some point in your life,
27 employed one or more other persons entitle you to any special treatment or
28 consideration above and beyond any other Nebraskan that has also employed
29 one or more persons?

1 A: No, of course not.

2 **Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
3 **have at one point employed another person within this state, entitles you to**
4 **preferential treatment or consideration of any kind?**

5 A: No, of course not. If I choose to employ someone that decision is up to me. I
6 don't deserve any special treatment or consideration for that fact.

7 **Q: Do you have any concerns TransCanada's fitness as an applicant for a major**
8 **crude oil pipeline in its preferred location, or ultimate location across the**
9 **state of Nebraska?**

10 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
11 or even bullied around and being made to feel scared that they did not have any
12 options but to sign whatever papers TransCanada told them they had to. I am
13 aware of folks being threatened that their land would be taken if they didn't follow
14 what TransCanada was saying. I am aware of tactics to get people to sign
15 easements that I don't believe have any place in Nebraska or anywhere such as
16 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
17 landowners and convince them they should sign TransCanada's easement
18 agreements. I am aware of older folks and widows or widowers feeling they had
19 no choice but to sign TransCanada's Easement and they didn't know they could
20 fight or stand up for themselves. From a more practical standpoint, I am worried
21 that according to their answer to Interrogatory No. 211, TransCanada only owns
22 and operates one (1) major oil pipeline. They simply do not have the experience
23 with this type of pipeline and that scares me. There are others but that is what I can
24 recollect at this time and if I remember more or my recollection is refreshed I will
25 share those with the Commissioners at the Hearing in August.

26 **Q: Do you have any concern about limitations that the construction of this**
27 **proposed pipeline across your affected land would prevent construction of**
28 **future structures upon the portion of the land affected by the proposed**
29 **easement and immediately surrounding areas?**

1 A: Well yes, of course I do. We would not be able to build many, if any, types of
2 structures directly across or touching the easement, and it would be unwise and I
3 would be uncomfortable to build anything near the easement for fear of being
4 blamed in the future should any damage or difficulty result on the property in
5 regards to the pipeline.

6 **Q: Do you think such a restriction would have economic impacts?**

7 A: Well yes, of course.

8 **Q: How do you think such a restriction would impact you economically?**

9 A: The future of this land may not be exactly how it's being used as of this moment,
10 and having the restrictions and limiting my ability to develop the land in certain
11 ways presents a huge negative economic impact on myself, my family, and any
12 potential future farmer or owner of the property. Fifty years ago it would have
13 been hard to imagine all the advances that we have now or how things change.
14 Because the Easement is forever and TransCanada gets the rights in the land
15 forever we have to think with a very long term view. By placing their pipeline on
16 under across and through the land that prevents future development which greatly
17 negatively impacts future taxes and tax revenue that could have been generated by
18 the County and State but now will not. When you look at the short blip of
19 economic activity that the two years of temporary construction efforts may bring,
20 that is far outweighed by the perpetual and forever loss of opportunity and
21 restrictions TransCanada is forcing upon us and Nebraska.

22 **Q: Do you have any concerns about the environmental impact of the proposed**
23 **pipeline?**

24 A: Yes, I do.

25 **Q: What are some of those concerns?**

26 A: I am concerned that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have a detrimental impact upon the
28 environment of the land specifically, as well as the lands near this land and
29 surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of the land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of the land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of the property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on the property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over the land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the

1 groundwater of not only under the land, but also near and surrounding the pipeline
2 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
3 simple and it is simply too valuable to our State and the country to put at
4 unreasonable risk.

5 **Q: Do you have any concern about the potential impact of the proposed pipeline**
6 **upon the surface water on, or near or around the land?**

7 A: Yes, I have significant concerns that any construction, operation, and/or
8 maintenance of the proposed Keystone XL Pipeline would have detrimental
9 impact upon the surface water of not only within the property boundary, but along
10 and near and surrounding the pipeline route, and in fact, across the state of
11 Nebraska.

12 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
13 **upon the wildlife and plants, other than your growing crops on or near the**
14 **land?**

15 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
16 the proposed Keystone XL Pipeline would have a detrimental impact upon the
17 wildlife and the plants, not only that are located on or can be found upon the land,
18 but also near and along the proposed pipeline route.

19 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
20 **fair market value of the land?**

21 A: Yes, I do. I am significantly concerned about how the existence of the proposed
22 pipeline underneath and across and through the property will negatively affect the
23 fair market value at any point in the future, especially at that point in which
24 someone in my family would need to sell the property. I do not believe, and
25 certainly would not be willing to pay, the same price for land that had the pipeline
26 located on it, versus land that did not. There are just too many risks, unknowns,
27 impacts and uncertainties, not to mention all of the rights you give up by the
28 nature of having the pipeline due to having the easement that we have previously

1 discussed, for any reasonable person to think that the existence of the pipeline
2 would not negatively affect the property's value.

3 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
4 **testimony?**

5 A: Yes, I have.

6 **Q: Where have you seen that before?**

7 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
8 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
9 believe the portion of the alternative route in Nebraska essentially twins or
10 parallels Keystone I.

11 **Q: Do you believe the portion of the proposed pipeline within Nebraska as found**
12 **in Attachment No. 5 to your testimony, is in the public interest of Nebraska?**

13 A: No, I do not.

14 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
15 **Application, and as found on Attachment No. 6, here to your testimony, is in**
16 **the public interest of Nebraska?**

17 A: No, I do not.

18 **Q: Do you believe that the Keystone mainline alternative route as shown on**
19 **Attachment No. 6 included with your testimony here is a major oil pipeline**
20 **route that is in the public interest of Nebraska?**

21 A: No, I do not.

22 **Q: Do you believe there is any potential route for the proposed Keystone XL**
23 **Pipeline across, within, under, or through the State of Nebraska that is in the**
24 **public interest of the citizens of Nebraska?**

25 A: No, I do not.

26 **Q: Why do you hold that belief?**

27 A: Because there simply is no public interest based on all of the factors that I am
28 aware and that I have read and that I have studied that this Commission is to
29 consider that would establish that a for-profit foreign-owned pipeline that simply

1 crosses Nebraska because we are geographically in the way between where tar
2 sands are in Canada to where it wants to ship it to in Texas could ever be in the
3 public interest of Nebraskans. We derive no benefit from this project. It is not for
4 public use. Nebraska is simply in the way and when all considerations are taken in
5 there is no net benefit of any kind for Nebraska should this project be placed in our
6 state. Even if there was some arguable “benefit” it is not enough to outweigh all
7 the negative impacts and concerns.

8 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
9 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
10 **of Nebraska because it may bring temporary jobs during the construction**
11 **phase to Nebraska?**

12 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
13 temporary or on a permanent basis, don’t come with a project that has all the
14 potential and foreseeable negative impacts, many of which we have discussed here
15 and other witnesses throughout the course of this hearing have and will discuss. If
16 I decide to hire and employ someone to help me out in my farming or ranching
17 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
18 to the land or my town or my county or my state. And I’ve hired someone who is
19 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
20 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
21 jobs are not created equal. Additionally, I understand from what I’m familiar with
22 from TransCanada’s own statements that the jobs numbers they originally touted
23 were determined to be a minute fraction of the permanent jobs that had been
24 projected. According to their answer to our Interrogatory No. 191, TransCanada
25 has created only thirty-four (34) jobs within Nebraska working specifically on
26 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
27 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
28 Further, according to their answer to Interrogatory No. 199, TransCanada would

1 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
2 constructed on its Preferred Route or its Mainline Alternative Route.

3 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
4 **because it would cross the land?**

5 A: No, absolutely not. I am opposed to this project because it is not in the public
6 interest, neither within my community nor within our state.

7 **Q: Would you be happier if instead of crossing the land, this proposed pipeline**
8 **was to cross someone else's land?**

9 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
10 the fear and anxiety and potential foreseeable risks and negative impacts that this
11 type of a project carrying this type of product brings foisted upon anyone in this
12 state or any other state.

13 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
14 **Pipeline to cross the state of Nebraska?**

15 A: I don't believe there is an intelligent route because as I have stated I don't believe
16 this project anywhere within Nebraska is within the public interest. However, if
17 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
18 had to go somewhere in the state of Nebraska, the only intelligent route I believe
19 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
20 preferred route and the mainline alternative routes are economic liabilities our
21 state cannot risk.

22 **Q: What do you rely upon to make that statement?**

23 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
24 already exists in that area is reason enough as it is not in our best interest or the
25 public interests to have more major oil pipelines crisscrossing our state. Second,
26 they have all the infrastructure already there in terms of relationships with the
27 counties and local officials and first responders along that route. Third, they have
28 already obtained easements from all the landowners along that route and have
29 relationships with them. Fourth, that route avoids our most sensitive soils, the

1 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
2 Aquifer. Sixth, they have already studied that route and previously offered it as an
3 alternative. Seventh, it just makes the most sense that as a state we would have
4 some intelligent policy of energy corridors and co-locating this type of
5 infrastructure near each other.

6 **Q: Do you have any other concerns you would like to reiterate or can think of at**
7 **this time you would like the Commissioners to understand?**

8 **A:** Yes. I would never buy land with an oil pipeline running under it. You could
9 never have underground sprinklers or irrigation which may be the wave of the
10 future. We could never put a home on the land because we can't excavate so it
11 stops us from freely using the land as we might wish to in the future. My heirs
12 will be affected for many decades to come and in a manner that is not even
13 foreseeable at present. Dirty oil flowing under the land and the contamination of
14 the land by putting something completely unnatural under the soil and then having
15 it placed right above the valuable and pristine Ogallala aquifer decreases the value
16 of the land. It is my understanding that pipelines leak and leak without detection
17 many times. How will the Ogallala aquifer ever be cleaned up if there is a leak?

18 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
19 **like the Public Service Commissioners to consider in their review of**
20 **TransCanada's Application?**

21 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
22 document below but other things may come to me or my memory may be
23 refreshed and I will add and address those things at the time of the Hearing in
24 August and address any additional items at that time as is necessary. Additionally,
25 I have not had an adequate amount of time to receive and review all of
26 TransCanada's answers to our discovery and the discovery of others so it was
27 impossible to competently and completely react to that in my testimony here and I
28 reserve the right to also address anything related to discovery that has not yet
29 concluded as of the date I signed this document below. Lastly, certain documents

1 requested have not yet been produced by TransCanada and therefore I may have
2 additional thoughts on those I will also share at the hearing as needed.

3 **Q: What is it that you are requesting the Public Service Commissioners do in**
4 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
5 **across Nebraska?**

6 A: I am respectfully and humbly requesting that the Commissioners think far beyond
7 a temporary job spike that this project may bring to a few counties and beyond the
8 relatively small amount of taxes this proposed foreign pipeline would possibly
9 generate. And, instead think about the perpetual and forever impacts of this
10 pipeline as it would have on the landowners specifically, first and foremost, but
11 also thereby upon the entire state of Nebraska, and to determine that neither the
12 preferred route nor the Keystone mainline alternative route are in the public
13 interest of the citizens of the state of Nebraska. And if the Commissioners were
14 inclined to modify TransCanada's proposed routes and were to be inclined to grant
15 an application for a route in Nebraska, that the only potential route that would
16 make any intelligent sense whatsoever would be twinning or near paralleling of
17 the proposed KXL with the existing Keystone I pipeline. It simply does not make
18 sense to add yet another major oil pipeline crisscrossing our state creating new
19 pumping stations, creating new impacts on additional counties and communities
20 and going through all of the court processes with myself and other landowners like
21 me when this applicant already has relationships with the landowners, the towns
22 and the communities along Keystone I, and that Keystone I is firmly outside of the
23 sand hills and a significantly further portion away from the heart of the Ogallala
24 Aquifer than the preferred route or the Keystone mainline alternative route.

25 **Q: Are all of your statements in your testimony provided above true and**
26 **accurate as of the date you signed this document to the best of your**
27 **knowledge?**

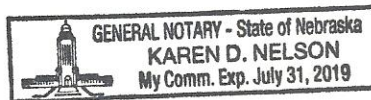
28 A: Yes, they are.

1 **Q:** Thank you, I have no further questions at this time and reserve the right to
2 ask you additional questions at the August 2017 Hearing.

Rick Hammond
Rick Hammond

Subscribed and Sworn to me before this 30th day of May, 2017.

Karen D. Nelson
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Lloyd Hipke in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Lloyd Hipke.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located at 47121 894th RD, Stuart, NE 68780 in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

EXHIBIT

25

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1 A: I background and pasture cattle. I farm corn and forage crops for our cattle and
2 put up hay and alfalfa. Trucking livestock and agricultural products supplements
3 my income.

4 **Q: If you are married tell us your spouse's name please?**

5 A: Vencille.

6 **Q: If you have children how many do you have?**

7 A: We have 3 Sons. Cody, his wife and daughter live on the same place as us in a
8 second house. Paul, Logan, their wives and our other 4 Grandchildren live within
9 the close vicinity of our Home place.

10 **Q: If you have grandchildren how many do you have?**

11 A: We have five Grandchildren.

12 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
13 and or your family?**

14 A. Yes. Since this picture was taken we have two more Grandbabies.

15 **Q: For the land that would be affected and impacted by the proposed KXL tar
16 sands pipeline give the Commissioners a sense how long the land has been in
17 your family and a little history of the land.**

18 A: Over 45 years. I inherited this land from my Dad and Mom. It is where I have
19 lived since returning from Military Service in 1973, some 43 years ago. It is the
20 base for my Ranching, Farming and Trucking operations.

21 **Q: Do you earn any income from this land?**

22 A: Yes.

23 **Q: Have you depended on the income from your land to support your livelihood
24 or the livelihood of your family?**

25 A: Yes. Besides me and my wife, this land helps support our 3 sons, who are
26 employed by us. All 3 of our sons have returned to work for us after attending
27 college. Cody served in the Army before he went to College. So they all moved
28 away from home for a while and have all decided this is where they wanted to
29 come back to settle to make their living and raise their families. I feel beings they

1 have made this commitment that it is our obligation to preserve and protect our
2 land for them and their offspring and future generations of our family.

3 **Q: Have you ever in the past or have you thought about in the future leasing all**
4 **or a portion of your land in question here?**

5 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
6 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
7 all the restrictions and risks and potential negative impacts to farming or ranching
8 operations as opposed to land that did not have those same risks. If I was looking
9 to lease or rent ground I would pay more for comparable non-pipeline land than I
10 would for comparable pipeline land and I think most folks would think the same
11 way. This is another negative economic impact that affects the landowner and the
12 county and the state and will forever and ever, should TransCanada's preferred or
13 mainline alternative routes be approved. If they were to twin or closely parallel to
14 Keystone I the vast majority of landowners would be those that already have a
15 pipeline so there would be considerable less new incremental negative impacts.

16 **Q: Do you have similar concerns about selling the land?**

17 A: Well I hope not to have to sell the land in my lifetime but times change and you
18 never know what is around the corner and yes I am concerned that if another piece
19 of ground similar to mine were for sale and it did not have the pipeline and mine
20 did that I would have a lower selling price. I think this would be true for pipeline
21 ground on both the preferred and mainline alternative routes.

22 **Q: What is your intent with your land after you die?**

23 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
24 to come, but I have thought about getting out if this pipeline were to come
25 through.

26 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
27 **Pipeline would cross the land described above and owned by you?**

28 A: Yes.

Q: Please describe your property that would be impacted by the potential TransCanada's Keystone XL Pipeline?

A: This is my Home place, where all the buildings and facilities are located. This pipeline would cross both farmland and pastureland. It comes within a few feet of our house well. The pipeline would dissect springs of water that flow into a dam where all of our water for our cattle operation comes from. We background and pasture over 1000 head of cattle per year and a leak into these springs or the dam would be devastating to my operation. The reason we use the dam for watering cattle is because we cannot get a well with sufficient volume to support the number of cattle we run. Good wells are hard to get in our area. Water is essential to our operation and we need to protect it to stay in business.

Q: Where on your property does the proposed route run through?

A: The proposed route comes within a few feet of our domestic well and would be located in the recharge field that supplies our drinking water. Water flows from West to East and the proposed pipeline would be located West of this well. So if there ever was a leak, the natural flow of water would bring the contamination right into our drinking water.

Q: Will this affect how you go about your lives on a daily basis?

A: We don't feel we could ever feel safe about drinking or bathing in this water in the future years without daily or at least weekly testing of the water in the event of an underground compromise of the pipe (a leak that would go undetected below the surface).

Q: Is this well private or public?

A: This is a private well.

Q: Was this well registered when TransCanada chose the route?

A: It was not registered as it was not required back in the day this well was drilled. When Trans Canada chose this route I'm sure they did not take it into account.

Q: Did you notify TransCanada upon learning that the well was on their route?

1 **A:** When we learned that this well was on their route we called Trans Canada and
2 invited them to inspect the location of the well on the maps and from the road.

3 **Q:** **When did you notify TransCanada?**

4 **A:** This was sometime in February 2013.

5 **Q:** **Do you remember the name(s) of the land agents that visited you that day?**

6 **A:** Yes, and we still possess two Company cards given to us from Brock Taylor &
7 Van Shepardson who were land agents on behalf of TransCanada here that day.

8 **Q:** **How many other people were at the meeting?**

9 **A:** There were close to 10 people at this meeting and we know that at least one of
10 them was an Engineer, however he did not give us his card. We thought by them
11 actually "seeing" our well they might vary the route away from the well and we
12 did show them on the maps a better route, which they briefly went to see.

13 **Q:** **Did you receive any correspondence from TransCanada after the meeting?**

14 **A:** Later, after this meeting we received two other mail correspondences

15 **Q:** **What were enclosed with the two correspondences?**

16 **A:** Potential route maps from TransCanada

17 **Q:** **Did the routes vary to avoid the well?**

18 **A:** They did not vary the route at all to avoid this well.

19 **Q:** **Did you contact another agency to speak with them about the well issue?**

20 **A:** Yes, the Nebraska Department of Environmental Quality.

21 **Q:** **What did the NDEQ tell you?**

22 **A:** We were told TransCanada would probably just drill us a new well.

23 **Q:** **Even if that were true, does drilling a new well cause a problem for your**
24 **land?**

25 **A:** Yes. The problem with drilling a new well is that it is near impossible to get a
26 "Good" well in our area, North of Stuart as any well man from this area will
27 testify, so we don't feel that is an option and certainly not an acceptable option. It
28 is too risky to sacrifice what we have now that we know is good and working.

- 1 **Q:** Has TransCanada contacted you, since your initial meeting, about an
2 alternate route away from the well?
- 3 **A:** To this day we have not seen any evidence or heard from TransCanada that they
4 have varied their route away from our well.
- 5 **Q:** Is the well currently registered?
- 6 **A:** Just recently we filed papers to register the well but have not received
7 confirmation from the State that it is done. How many other unregistered wells
8 does this proposed route not take into consideration?
- 9 **Q:** Does the proposed route affect the water for your cattle as well?
- 10 **A:** The proposed route dissects vital springs of water that flows into a dam that we
11 use to water our cattle with.
- 12 **Q:** How many feeder cattle use the vital springs as their source of water?
- 13 **A:** There are times when our feedlot numbers are up to 1000 head of feeder cattle that
14 use from this water source.
- 15 **Q:** What happens to your cattle operation if the springs of water get
16 contaminated?
- 17 **A:** If the springs of water that fill this dam becomes disrupted or contaminated our
18 Cattle operation will be compromised to the point of non-existence.
- 19 **Q:** Are there other springs of water that your cattle drink out of?
- 20 **A:** There are other springs of water farther out in the pastures that are dissected as
21 well and these flow into creeks & streams that our pasture cattle water out of.
- 22 **Q:** How does the proposed route cut across your land?
- 23 It is a diagonal cut across our land.
- 24 **Q:** Does that raise any concerns to you?
- 25 **A:** Yes, this also concerns us as to the use of ALL of the pastureland if they require
26 the fencing out of the pipeline, either for the "healing" process of new grasses
27 planted or to permanently keep cattle away from the pipeline.
- 28 **Q:** How many pastures will the route affect?
- 29 **A:** Two separate pastures

- 1 **Q: How will they be affected?**
- 2 **A:** They would be cut across diagonally and the land not on the side of the water
- 3 source would become useless without a water source. The land would take a lot of
- 4 years to "heal" and be back to full potential, probably just to be dug up again in the
- 5 event of a leak or pipe replacement. We will lose use of a lot of our pasture land
- 6 and that means lost productive ground and lost income. And this will be forever
- 7 after TransCanada is long gone. Remember they want us to sign an easement that
- 8 is "Perpetual" and to their "assigns or successors" which means FOREVER!
- 9 **Q: Does the pipeline run through any objects that will affect your land?**
- 10 **A:** Out in the pastureland are huge rocks which the proposed route would cross
- 11 thru. It is to our understanding that TransCanada would not have to bury the pipe
- 12 as deep thru these areas.
- 13 **Q: Do you have any concerns about this?**
- 14 **A:** This concerns us as to the heating up of the soil because the pipe is nearer to the
- 15 surface and the "healing" of the land so that it could ever be pastured again. The
- 16 inability of the land to heal will be followed by erosion on the
- 17 uneven surfaces. Also these rocks are constantly moving and emerging so the
- 18 possibility of them pushing into the pipe causing a rupture is possible, esp. during
- 19 an earthquake (we've felt them out here before!).
- 20 **Q: Will the value of your land decrease with the pipeline running through it?**
- 21 **A:** We have concerns as to the devaluation of our land. We have heard about banking
- 22 institutions that are not loaning money and devaluing land on this proposed route.
- 23 **Q: How does this affect the financial stability of your family and business?**
- 24 **A:** This greatly affects our Financial as this land is the soul of our operation, where all
- 25 the buildings and feedlots are located (our Homeplace). Our hope is to pass this
- 26 land on down to our three sons but their Financials too will FOREVER devalued.
- 27 **Q: Do you have any concerns as to the safety of the pipeline?**
- 28 **A:** There are multiple concerns for us as to the Safety of this pipeline

1 **Q:** Do you have any concerns that TransCanada may abandon the pipeline when
2 it is completed?

3 **A:** Yes, this is extremely concerning about the ability for TransCanada to abandon the
4 dirty pipe in the ground whenever they want.

5 **Q:** What are your concerns?

6 **A:** We can't afford to take it out. They probably wouldn't even let us if we could.
7 And they are not offering to pay for their luxury of leaving it in place.

8 **Q:** Do you have any concerns that the pipeline may contaminate your neighbors
9 land?

10 **A:** We are concerned about Liability issues if the pipeline on our land contaminates
11 our neighbors land. We cannot afford the Insurance or the cleanup costs if there is
12 a leak on our land that affects our neighbors or our land. We should not have to be
13 liable for Trans Canada's operation of this pipeline. I'm sure there will be
14 more concerns about this pipeline as we go forward, but these are the main ones I
15 have at this time.

16 **Q:** Were you or an entity for which you are a member, shareholder, or director
17 previously sued by TransCanada Keystone Pipeline, LP?

18 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
19 petition for condemnation against our land so it could place its proposed pipeline
20 within an easement that it wanted to take from us on our land.

21 **Q:** Did you defend yourself and your land in that condemnation action?

22 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
23 and expenses in our resistance of TransCanada's lawsuit against us.

24 **Q:** Has TransCanada reimbursed you for any of your expenses or costs for fees
25 incurred?

26 **A:** No, they have not.

27 **Q:** In its lawsuit against you, did TransCanada identify the amount of your
28 property that it wanted to take for its proposed pipeline?

1 A: The lawsuit against us stated they would take the amount of property that is
2 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
3 and equipment reasonably necessary to operate the pipeline.

4 Q: Did TransCanada define what they meant by “property that is reasonably
5 necessary”?

6 A: No, they did not.

7 Q: Did TransCanada in its lawsuit against you, identify the eminent domain
8 property portion of your land?

9 A: Yes, they did.

10 Q: Did TransCanada describe what rights it proposed to take related to the
11 eminent domain property on your land?

12 A: Yes, they did.

13 Q: What rights that they proposed to take did they describe?

14 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
15 operate, and maintain the pipeline and the plant and equipment reasonably
16 necessary to operate the pipeline, specifically including surveying, laying,
17 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
18 reconstructing, removing and abandoning one pipeline, together with all fittings,
19 cathodic protection equipment, pipeline markers, and all their equipment and
20 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
21 petroleum products, and all by-products thereof.”

22 Q: Prior to filing an eminent domain lawsuit to take your land that
23 TransCanada identified, do you believe they attempted to negotiate in good
24 faith with you?

25 A: No, I do not.

26 Q: Did TransCanada at any time approach you with or deliver to you their
27 proposed easement and right-of-way agreement?

28 A: Yes, they did.

1 **Q:** At the time you reviewed TransCanada's easement and right-of-way
2 agreement, did you understand that they would be purchasing a fee title
3 interest in your property or that they were taking something else?

4 **A:** I understood that they proposed to have the power to take both a temporary
5 construction easement that could last for a certain period of time and then also a
6 permanent easement which they described to be 50 feet across or in width, and
7 that would run the entire portion of my property from where a proposed pipeline
8 would enter my property until where it would exit the property.

9 **Q:** Is the document included with your testimony here as Attachment No. 3, a
10 true and accurate copy of TransCanada's proposed Easement and Right-of-
11 Way agreement that they included with their condemnation lawsuit against
12 you?

13 **A:** Yes, it is.

14 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
15 and Right-of-Way agreement?

16 **A:** Yes, I have.

17 **Q:** What is your understanding of the significance of the Easement and Right-of-
18 Way agreement as proposed by TransCanada?

19 **A:** My understanding is that this is the document that will govern all of the rights and
20 obligations and duties as well as the limitations of what I can and cannot do and
21 how I and any future landowner and any person I invite to come onto my property
22 must behave as well as what TransCanada is and is not responsible for and how
23 they can use my land.

24 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
25 agreement do you have any concerns about any portions of it or any of the
26 language either included in the document or missing from the proposed
27 document?

28 **A:** I have a number of significant concerns and worries about the document and how
29 the language included and the language not included potentially negatively

1 impacts my land and thereby potentially negatively impacts my community and
2 my state.

3 **Q: I would like you to walk the Commissioners through each and every one of**
4 **your concerns about TransCanada's proposed Easement and Right-of-Way**
5 **agreement so they can develop an understanding of how that language and**
6 **the terms of that contract, in your opinion, potentially negatively impacts you**
7 **and your land. So, if you can start at the beginning of that document and**
8 **let's work our way through it, okay?**

9 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
10 Easement and Right-of-Way agreement and how it negatively could affect my
11 property rights and my economic interests.

12 **Q. Okay, let's start with your first concern please.**

13 **A:** The very first sentence talks about consideration or how much money they will
14 pay to compensate me for all of the known and unknown affects and all of the
15 rights I am giving up and for all the things they get to do to my land and for what
16 they will prevent me from doing on my land and they only will pay me one time at
17 the signing of the easement agreement. That is a huge problem.

18 **Q: Explain to the Commissioners why that is a problem.**

19 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
20 landowner because they want to have my land forever for use as they see fit so
21 they can make a daily profit from their customers. If I was to lease ground from
22 my neighbor I would typically pay twice a year every year as long as they granted
23 me the rights to use their land. That only makes sense – that is fair. If I was going
24 to rent a house in town I would typically pay monthly, every month until I gave up
25 my right to use that house. By TransCanada getting out on the cheap and paying
26 once in today's dollars- that is a monthly, bi-annual, or at least an annual loss in
27 tax revenue collection on the money I would be paid and then pay taxes on and
28 contribute to this state and this country. It is money I would be putting back into
29 my local community both spending and stimulating the local economy and

1 generating more economic activity right here. Instead TransCanada's shareholders
2 keep all that money and it never finds its way to Nebraska.

3 **Q: What is your next concern?**

4 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
5 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
6 limited partnership..." and I have no idea who that really is. I have no idea who is
7 forcing this pipeline on us or who the owners of the entities are, or what are the
8 assets backing this limited partnership, or who the general partner is, or who all
9 the limited partners are, and who makes up the ownership of the these partners or
10 the structure or any of the basic things you would want to know and understand if
11 you would want to do business with such an outfit. According to TransCanada's
12 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
13 liability company called TransCanada Keystone Pipeline GP, LLC is the general
14 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
15 basically nothing. That is really scary since the general partner has the liability but
16 virtually none of the ownership and who knows if it has any other assets.

17 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
18 **percent clear on exactly who could become the owner of over 275 miles of**
19 **Nebraska land?**

20 A: No.

21 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
22 **percent clear on exactly who will be operating and responsible for**
23 **approximately 275 miles of tar sands pipeline underneath and through**
24 **Nebraska land?**

25 A: No.

26 **Q: Okay, let's continue please with your concerns of the impacts upon your land**
27 **and the State of Nebraska of TransCanada's easement terms.**

28 A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter
29 called "Grantee")..." and this concerns me because it would allow their easement

1 to be transferred or sold to someone or some company or country or who knows
2 what that I don't know and who we may not want to do business with. This
3 pipeline would be a huge asset for TransCanada and if they can sell to the highest
4 bidder that could have terrible impacts upon all of Nebraska depending upon who
5 may buy it and I don't know of any safeguards in place for us or the State to veto
6 or have any say so in who may own, operate, or be responsible for this pipeline in
7 the future.

8 **Q: Do you think that type of uncertainty and lack of control over a major piece**
9 **of infrastructure crossing our State is in the public interest?**

10 **A:** No, certainly not, in fact, just the opposite.

11 **Q: What's next?**

12 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
13 really concerns me. Why does the easement and right-of-way have to be perpetual
14 and permanent? That is the question myself and my family want an answer to.
15 Perpetual to me is like forever and that doesn't make sense.

16 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

17 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
18 data proving there is a perpetual supply of tar sands. I am not aware in
19 TransCanada's application where it proves there is a perpetual necessity for this
20 pipeline. My understanding of energy infrastructure like wind towers is they have
21 a decommission plan and actually take the towers down when they become
22 obsolete or no longer needed. Nothing manmade lasts forever. My land however
23 will, and I want my family or future Nebraska families to have that land as
24 undisturbed as possible and it is not in my interest or the public interest of
25 Nebraska to be forced to give up perpetual and permanent rights in the land for
26 this specific kind of pipeline project.

27 **Q: Okay, what is your next concern?**

28 **A:** The easement language includes all these things TransCanada can do and it says
29 "...abandoning in place..." so they can just leave this pipeline under my ground

1 until the end of time just sitting there while they are not using it, but I am still
2 prevented from doing on my land and using my land what I would like. If I owned
3 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
4 there. It doesn't make sense and it scares me and it is not in my interest or the
5 public interest of Nebraska to allow this.

6 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
7 **right?**

8 **A:** Yes.

9 **Q: So now on the second page of the Easement what are your concerns?**

10 **A:** Here the Easement identifies a 24-month deadline to complete construction of the
11 pipeline but has caveats that are undefined and ambiguous. The 24-month period
12 starts to run from the moment "actual pipeline installation activities" begin on
13 Landowners property. It appears that TransCanada would define this phrase as
14 needed. It would be wise to explain what types of TransCanada action constitutes
15 "installation activity" For instance, would the placement and storage of an
16 excavator or other equipment on or near the Easement property be an activity or
17 would earth have to be moved before the activity requirement is triggered. This
18 vague phrase is likely to lead to future disputes and litigation that is not in the best
19 interest of the welfare of Nebraska and would not protect property interests. The
20 24-months can also be extended in the case of "force majeure." My understanding
21 is that force majeure is often used to insulate a party to a contract when events
22 occur that are completely out of their control. In TransCanada's easement this is
23 expanded to include "without limitation...availability of labor and materials."
24 Extending this language to labor and materials is problematic because these are
25 two variables that TransCanada does have some or significant control over and to
26 allow extension of the 24-month period over events not truly out of the control of
27 TransCanada and without further provision for compensation for the Landowner is
28 not conducive to protection of property rights.

29 **Q: Okay, what is your next concern?**

1 A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
2 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
3 reasonable costs and expenses” will pay for damages caused but then limits
4 TransCanada’s liability to certain circumstances. There is no definition of
5 “commercially reasonable” and no stated right that the Landowner would get to
6 determine the amounts of cost or expense that is “commercially reasonable.”
7 TransCanada excepts out from their liability any damages that are caused by
8 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
9 Landowner. It is understandable that if the Landowner were to willfully and
10 intentionally cause damages to the pipeline that Landowner should be liable.
11 However, anything short of willful misconduct should be the liability of
12 TransCanada who is subjecting the pipeline on the Landowner and who is making
13 a daily profit from that pipeline. When evaluating the impact on property rights of
14 this provision, you must consider the potentially extremely expensive fight a
15 Landowner would have over this question of whether or not damage was an act of
16 negligence. Putting this kind of potential liability upon the Landowner is
17 incredibly problematic and is detrimental to the protection of property rights. I
18 don’t think this unilateral power which I can’t do anything about as the landowner
19 is in the best economic interest of the land in question or the State of Nebraska for
20 landowners to be treated that way.

21 **Q: Is there any specific event or example you are aware of that makes this**
22 **concern more real for you?**

23 A: Yes, one need not look further than a November 3, 2015 lawsuit filed against
24 Nemaha County, Nebraska landowner farmers who accidentally struck two
25 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
26 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
27 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
28 copy of the Federal Court Complaint is here as **Attachment No. 4.**

29 **Q: What is your next concern with the Easement language?**

1 A: Paragraph 3 states that Landowner can farm on and otherwise use their property as
2 they choose unless 1) any Landowner use interferes in any way with
3 TransCanada's exercise of any of its rights within the Easement, or 2)
4 TransCanada decides to take any action on the property it deems necessary to
5 prevent injury, endangerment or interference with anything TransCanada deems
6 necessary to do on the property. Landowner is also forbidden from excavating
7 without prior authorization by TransCanada. So my understanding is that
8 TransCanada will unilaterally determine what Landowner can and can't do based
9 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
10 could also completely deny my request to excavate. Further, TransCanada retains
11 all "privileges necessary or convenient for the full use of the rights" granted to
12 them in the Easement. Again, TransCanada unilaterally can decide to the
13 detriment of the property rights of Landowner what TransCanada believes is
14 necessary or convenient for it. And there is no option for any additional
15 compensation to landowner for any right exercised by TransCanada that leads to
16 the removal of trees or plants or vegetation or buildings or structures or facilities
17 owned by Landowner of any kind. Such undefined and unilateral restrictions and
18 rights without having to compensate Landowner for such further destruction or
19 losses are not conducive to the protection of property rights or economic interest.

20 **Q: What is the next concern you have?**

21 A: The Easement also allows some rights for Landowner but restricts them at the
22 same time and again at the sole and unilateral decision making of TransCanada.
23 TransCanada will determine if the actions of Landowner might in anyway
24 endanger or obstruct or interfere with TransCanada's full use of the Easement or
25 any appurtenances thereon to the pipeline itself or to their access to the Easement
26 or within the Easement and TransCanada retains the right at any time, whether
27 during growing season or not, to travel "within and along Easement Area on foot
28 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
29 retain the rights to prevent any landowner activity that it thinks may "unreasonably

1 impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such
2 undefined and unilateral restrictions are not conducive to the protection of
3 property rights or economic interest.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
6 Landowner’s land any debris of any kind without any input or power of
7 Landowner to demand an alternative method or location of debris disposal. Such
8 unilateral powers would negatively affect Landowners property are not conducive
9 to the protection of property rights or economic interest.

10 **Q: What is the next concern you have with the Easement language?**

11 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
12 “where rock is encountered” mean and why does TransCanada solely get to
13 determine whether or not this phrase is triggered. This phrase could be used to
14 justify installing the pipeline 24 inches beneath the surface. The ability to use this
15 provision to minimal locate the pipeline at a depth of 24 inches could negatively
16 affect Landowners property is not conducive to the protection of property rights. A
17 shallow pipeline is much more likely to become a danger and liability in the future
18 given farming operations and buried irrigation lines and other factors common to
19 the current typical agricultural uses of the land in question impacted by
20 TransCanada’s preferred pipeline route.

21 **Q: What is the next concern you have with the Easement language?**

22 A: There are more vague concepts solely at the determination of TransCanada such as
23 “as nearly as practicable” and “pre-construction position” and “extent reasonably
24 possible.” There is nothing here that defines this or provides a mechanism for
25 documenting or memorializing “pre-construction position” so as to minimize
26 costly legal battles or wasted Landowner time attempting to recreate the soil
27 condition on their fields or pasture. Such unilateral powers would negatively affect
28 Landowners property are not conducive to the protection of property rights or
29 economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative the their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement

1 thereby forcing upon the Landowner and our State a new unknown Easement
2 owner.

3 **Q: What is the next concern you have with the Easement language?**

4 **A:** There are many terms in the Easement that are either confusing or undefined terms
5 that are without context as to whether or not the Landowner would have any say
6 so in determining what these terms mean or if the evaluation is solely in
7 TransCanada's control. Some of these vague undefined terms are as follows:

- 8 i. "pipeline installation activities"
- 9 ii. "availability of labor and materials"
- 10 iii. "commercially reasonable costs and expenses"
- 11 iv. "reasonably anticipated and foreseeable costs and expenses"
- 12 v. "yield loss damages"
- 13 vi. "diminution in the value of the property"
- 14 vii. "substantially same condition"
- 15 viii. "an actual or potential hazard"
- 16 ix. "efficient"
- 17 x. "convenient"
- 18 xi. "endangered"
- 19 xii. "obstructed"
- 20 xiii. "injured"
- 21 xiv. "interfered with"
- 22 xv. "impaired"
- 23 xvi. "suitable crossings"
- 24 xvii. "where rock is encountered"
- 25 xviii. "as nearly as practicable"
- 26 xix. "pre-construction position"
- 27 xx. "pre-construction grade"
- 28 xxi. "various engineering factors"

1 Each one of these above terms and phrases as read in the context of the Easement
2 could be problematic in many ways. Notably, undefined terms tend to only get
3 definition in further legal proceedings after a dispute arises and the way the
4 Easement is drafted, TransCanada has sole power to determine when and if a
5 particular situation conforms with or triggers rights affected by these terms. For
6 instance, “yield loss damages” should be specifically defined and spelled out
7 exactly how the landowner is to be compensated and in what events on the front
8 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
9 the Landowner is without contractual rights to define these terms or determine
10 when rights related to them trigger and what the affects may be.

11 **Q: Do you have any other concerns about the Easement language that you can**
12 **think of at this time?**

13 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
14 my live testimony in August.

15 **Q: Based upon what you have shared with the Commission above regarding**
16 **TransCanada’s proposed Easement terms and agreement, do you believe**
17 **those to be reasonable or just, under the circumstances of the pipeline’s**
18 **impact upon you and your land?**

19 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
20 discussed previously.

21 **Q: Did TransCanada ever offer you financial compensation for the rights that**
22 **they sought to obtain in your land, and for what they sought to prevent you**
23 **and any future land owner of your property from doing in the future?**

24 **A:** Yes, we received an offer from them.

25 **Q: As the owner of the land in question and as the person who knows it better**
26 **than anyone else, do you believe that TransCanada offered you just, or fair,**
27 **compensation for all of what they proposed to take from you so that their tar**
28 **sands pipeline could be located across your property?**

1 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
2 offer for all the potential impacts and effects and the rights that I'm giving up, and
3 what we will be prevented from doing in the future and how their pipeline would
4 impact my property for ever and ever.

5 Q: **Has TransCanada at any time offered to compensate you annually, such as**
6 **wind farm projects do, for the existence of their potential tar sands pipeline**
7 **across your property.**

8 A: No, never.

9 Q: **At any time did TransCanada present you with or request that you, as the**
10 **owner of the land in question, sign and execute a document called, "Advanced**
11 **Release of Damage Claims and Indemnity Agreement?"**

12 A: Yes, they did and it was included in the County Court lawsuit against us.

13 Q: **Is Attachment No. 5, to your testimony here, a true and accurate copy of the**
14 **"Advanced Release of Damage Claims and Indemnity Agreement?"**

15 A: Yes, it is.

16 Q: **What was your understanding of that document?**

17 A: When I read that document in the plain language of that document, it was my
18 understanding that TransCanada was attempting to pay me a very small amount at
19 that time in order for me to agree to give up my rights to be compensated from
20 them in the future related to any damage or impact they may have upon my
21 property "arising out of, in connection with, or alleged to resulted from
22 construction or surveying over, under or on" my land.

23 Q: **Did you ever sign that document?**

24 A: No, I did not.

25 Q: **Why not?**

26 A: Because I do not believe that it is fair or just to try to get me to agree to a small
27 sum of money when I have no idea how bad the impacts or damages that they, or
28 their contractors, or subcontractors, or other agents or employees, may cause on

1 my land at any time in the future that resulted from the construction or surveying
2 or their activities upon my land.

3 **Q: When you reviewed this document, what did it make you feel?**

4 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
5 shield themselves against known and foreseeable impacts that their pipeline, and
6 the construction of it, would have upon my land. It made me feel that they knew it
7 was in their financial interest to pay me as little as possible to prevent me from
8 ever having the opportunity to seek fair compensation again, and that this must be
9 based upon their experience of unhappy landowners and situations in other places
10 where they have built pipelines.

11 **Q: Has TransCanada ever contacted you and specifically asked you if you**
12 **thought their proposed location of their proposed pipeline across your land**
13 **was in your best interest?**

14 A: No, they have not.

15 **Q: Has TransCanada ever contacted you and specifically asked you if you**
16 **thought their proposed location of their proposed pipeline across your land**
17 **was in the public interest of the State of Nebraska?**

18 A: No, they have not.

19 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
20 **Takings Clause?**

21 A: Yes, I am.

22 **Q: What is your understanding of the Fifth Amendment as it relates to taking of**
23 **an American citizens property?**

24 A: My understanding is that, according to the United States Constitution, that if the
25 government is going to take land for public use, then in that case, or by taking for
26 public use, it can only occur if the private land owner is compensated justly, or
27 fairly.

28 **Q: Has TransCanada ever contacted you specially to explain the way in which**
29 **the public could use its proposed Keystone XL Pipeline?**

1 A: No, they have not.

2 Q: Can you think of any way in which the public, that is the citizens of the State
3 of Nebraska, can directly use the proposed TransCanada Keystone XL
4 Pipeline, as it dissects the State of Nebraska?

5 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
6 public benefits from this pipeline in any way, how they can use it any way, or how
7 it's in the public interest in any way. By looking at the map, it is quite clear to me
8 that the only reason it's proposed to come through Nebraska, is that because we
9 are geographically in the way from between where the privately-owned Tar Sands
10 are located to where TransCanada wants to ship the Tar Sands to refineries in
11 Houston, Texas.

12 Q: Has TransCanada ever contacted you and asked you if you had any tar sands,
13 crude petroleum, or oil and petroleum by-products that you would like to
14 ship in its pipeline?

15 A: No, it has not.

16 Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-
17 products that you, at this time or any time in the future, would desire to place
18 for transport within the proposed TransCanada Keystone XL Pipeline?

19 A: No, I do not.

20 Q: Do you know anyone in the state of Nebraska who would be able to ship any
21 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
22 products within the proposed TransCanada Keystone XL Pipeline?

23 A: No, I do not. I've never heard of such a person or company like that.

24 Q: Do you pay property taxes for the land that would be affected and impacted
25 at the proposed TransCanada Keystone XL Pipeline?

26 A: Yes, I do.

27 Q: Why do you pay property taxes on that land?

28 A: Because that is the law. The law requires us to pay the property taxes as the owner
29 of that property.

1 **Q:** Because you follow the law and pay property taxes, do you believe you
2 deserve any special consideration or treatment apart from any other person
3 or company that pays property taxes?

4 A: Well no, of course not. It's the law to pay property taxes if you own property. It's
5 just what you do.

6 **Q:** Do you believe the fact that you pay property taxes entitles you to special
7 treatment of any kind, or special rights of any kind?

8 A: No, of course not.

9 **Q:** Do you believe the fact that you pay property taxes on your land would be
10 enough to qualify you to have the power of eminent domain to take land of
11 your neighbors or other people in your county, or other people across the
12 state of Nebraska?

13 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
14 I expect an award for or any type of special consideration.

15 **Q:** Have you at any time ever employed any person other than yourself?

16 A: Well, yes I have.

17 **Q:** Do you believe that the fact that you have, at some point in your life,
18 employed one or more other persons entitle you to any special treatment or
19 consideration above and beyond any other Nebraskan that has also employed
20 one or more persons?

21 A: No, of course not.

22 **Q:** Do you believe that the fact that you, as a Nebraska land owner and taxpayer
23 have at one point employed another person within this state, entitles you to
24 preferential treatment or consideration of any kind?

25 A: No, of course not. If I choose to employ someone that decision is up to me. I
26 don't deserve any special treatment or consideration for that fact.

27 **Q:** Do you have any concerns TransCanada's fitness as an applicant for a major
28 crude oil pipeline in its preferred location, or ultimate location across the
29 state of Nebraska?

1 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
2 or even bullied around and being made to feel scared that they did not have any
3 options but to sign whatever papers TransCanada told them they had to. I am
4 aware of folks being threatened that their land would be taken if they didn't follow
5 what TransCanada was saying. I am aware of tactics to get people to sign
6 easements that I don't believe have any place in Nebraska or anywhere, such as
7 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
8 landowners and convince them they should sign TransCanada's easement
9 agreements. I am aware of older folks and widows or widowers feeling they had
10 no choice but to sign TransCanada's Easement and they didn't know they could
11 fight or stand up for themselves. From a more practical standpoint, I am worried
12 that according to their answer to our Interrogatory No. 211, TransCanada only
13 owns and operates one (1) major oil pipeline. They simply do not have the
14 experience with this type of pipeline and that scares me. There are others but that
15 is what I can recollect at this time and if I remember more or my recollection is
16 refreshed I will share those with the Commissioners at the Hearing in August.

17 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
18 **landowner is reasonable or just?**

19 A: No, I do not.

20 **Q: Do you have any concern about limitations that the construction of this**
21 **proposed pipeline across your affected land would prevent construction of**
22 **future structures upon the portion of your land affected by the proposed**
23 **easement and immediately surrounding areas?**

24 A: Well yes, of course I do. We would not be able to build any type of structures
25 directly across or touching the easement, and it would be unwise and I would be
26 uncomfortable to build anything near the easement for fear of being blamed in the
27 future should any damage or difficulty result on my property in regards to the
28 pipeline. What if I would want to expand my feedlot operation? I may be putting

1 in more feedlots or a Hoop building. This area would be where I would consider
2 doing that.

3 **Q: Do you think such a restriction would impact you economically?**

4 A: Well yes, of course. It restricts both me and my successors from expanding
5 operations.

6 **Q: How do you think such a restriction would impact you economically?**

7 A: The future of this land may not be exactly how it's being used as of this moment,
8 and having the restrictions and limiting my ability to develop my land in certain
9 ways presents a huge negative economic impact on myself, my family, and any
10 potential future owner of the property. You have no idea how I or the future owner
11 may want to use this land in the future or the other land across Nebraska
12 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
13 ago it would have been hard to imagine all the advances that we have now or how
14 things change. Because the Easement is forever and TransCanada gets the rights in
15 my land forever we have to think with a very long term view. By placing their
16 pipeline on under across and through my land that prevents future development
17 which greatly negatively impacts future taxes and tax revenue that could have
18 been generated by the County and State but now will not. When you look at the
19 short blip of economic activity that the two years of temporary construction efforts
20 may bring, that is far outweighed by the perpetual and forever loss of opportunity
21 and restrictions TransCanada is forcing upon us and Nebraska.

22 **Q: Do you have any concerns about the environmental impact of the proposed**
23 **pipeline?**

24 A: Yes, I do.

25 **Q: What are some of those concerns?**

26 A: As an affected land owner and Nebraskan, I am concerned that any construction,
27 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
28 a detrimental impact upon the environment of my land specifically, as well as the
29 lands near my land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of my land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of your land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years. This disruption could be during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same as it exists now, undisturbed, to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over your land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the

1 groundwater of not only under my land, but also near and surrounding the pipeline
2 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
3 simple and it is simply too valuable to our State and the country to put at
4 unreasonable risk.

5 **Q: Do you have any concern about the potential impact of the proposed pipeline**
6 **upon the surface water on, or near or around your land?**

7 A: Yes, I have significant concerns that any construction, operation, and/or
8 maintenance of the proposed Keystone XL Pipeline would have detrimental
9 impact upon the surface water of not only within my property boundary, but along
10 and near and surrounding the pipeline route, and in fact, across the state of
11 Nebraska.

12 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
13 **upon the wildlife and plants, other than your growing crops on or near your**
14 **land?**

15 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
16 the proposed Keystone XL Pipeline would have a detrimental impact upon the
17 wildlife and the plants, not only that are located on or can be found upon my land,
18 but also near and along the proposed pipeline route.

19 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
20 **fair market value of your land?**

21 A: Yes, I do. I am significantly concerned about how the existence of the proposed
22 pipeline underneath and across and through my property will negatively affect the
23 fair market value at any point in the future, especially at that point in which I
24 would need to sell the property, or someone in my family would need to sell the
25 property. I do not believe, and certainly would not be willing to pay, the same
26 price for land that had the pipeline located on it, versus land that did not. I hope
27 there is never a point where I'm in a position where I have to sell and have to
28 realize as much value as I can out of my land. But because it is my single largest
29 asset, I'm gravely concerned that the existence of the proposed Keystone XL

1 Pipeline upon my land will affect a buyer's willingness to pay as much as they
2 would've paid and as much as I could've received, if the pipeline were not upon
3 my property. There are just too many risks, unknowns, impacts and uncertainties,
4 not to mention all of the rights you give up by the nature of having the pipeline
5 due to having the easement that we have previously discussed, for any reasonable
6 person to think that the existence of the pipeline would not negatively affect my
7 property's value.

8 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
9 **testimony?**

10 A: Yes, I have.

11 **Q: Where have you seen that before?**

12 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
13 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
14 believe the portion of the alternative route shown here that is within Nebraska
15 essentially twins or parallels Keystone I.

16 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
17 **Application, and as found on Attachment No. 7, here to your testimony, is in**
18 **the public interest of Nebraska?**

19 A: No, I do not.

20 **Q: Do you believe that the Keystone mainline alternative route as shown on**
21 **Attachment No. 7 included with your testimony here is a major oil pipeline**
22 **route that is in the public interest of Nebraska?**

23 A: No, I do not.

24 **Q: Do you believe the portion of what has been previously called the I-90**
25 **corridor alternative route, specifically for the portion of the proposed**
26 **pipeline within Nebraska as found in Attachment No. 6 to your testimony, is**
27 **in the public interest of Nebraska?**

28 A: No, I do not.

Q: Do you believe there is any potential route for the proposed Keystone XL Pipeline across, within, under, or through the State of Nebraska that is in the public interest of the citizens of Nebraska?

A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that its preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with

1 from TransCanada's own statements that the jobs numbers they originally touted
2 were determined to be a minute fraction of the permanent jobs that had been
3 projected. According to their answer to our Interrogatory No. 191, TransCanada
4 has created only thirty-four (34) jobs within Nebraska working specifically on
5 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
6 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
7 Further, according to their answer to Interrogatory No. 199, TransCanada would
8 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
9 constructed on its Preferred Route or its Mainline Alternative Route.

10 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
11 **because it would cross your land?**

12 A: No, absolutely not. I am opposed to this project because it is not in the public
13 interest, neither within my community nor within our state.

14 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
15 **was to cross someone else's land?**

16 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
17 the fear and anxiety and potential foreseeable risks and negative impacts that this
18 type of a project carrying this type of product brings forced upon anyone in this
19 state or any other state.

20 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
21 **Pipeline to cross the state of Nebraska?**

22 A: I don't believe there is an intelligent route because as I have stated I don't believe
23 this project anywhere within Nebraska is within the public interest. However, if
24 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
25 had to go somewhere in the state of Nebraska, the only intelligent route I believe
26 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
27 preferred route and the mainline alternative routes are economic liabilities our
28 state cannot risk.

29 **Q: What do you rely upon to make that statement?**

1 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
2 already exists in that area is reason enough as it is not in our best interest or the
3 public interests to have more major oil pipelines crisscrossing our state. Second,
4 they have all the infrastructure already there in terms of relationships with the
5 counties and local officials and first responders along that route. Third, they have
6 already obtained easements from all the landowners along that route and have
7 relationships with them. Fourth, that route avoids our most sensitive soils, the
8 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
9 Aquifer. Sixth, they have already studied that route and previously offered it as an
10 alternative. Seventh, it just makes the most sense that as a state we would have
11 some intelligent policy of energy corridors and co-locating this type of
12 infrastructure near each other.

13 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
14 **like the Public Service Commissioners to consider in their review of**
15 **TransCanada's Application?**

16 A: No, I have not. I have shared that which I can think of as of the date I signed this
17 document below but other things may come to me or my memory may be
18 refreshed and I will add and address those things at the time of the Hearing in
19 August and address any additional items at that time as is necessary. Additionally,
20 I have not had an adequate amount of time to receive and review all of
21 TransCanada's answers to our discovery and the discovery of others so it was
22 impossible to competently and completely react to that in my testimony here and I
23 reserve the right to also address anything related to discovery that has not yet
24 concluded as of the date I signed this document below. Lastly, certain documents
25 requested have not yet been produced by TransCanada and therefore I may have
26 additional thoughts on those I will also share at the hearing as needed.

27 **Q: What is it that you are requesting the Public Service Commissioners do in**
28 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
29 **across Nebraska?**

1 A: I am respectfully and humbly requesting that the Commissioners think far beyond
2 a temporary job spike that this project may bring to a few counties and beyond the
3 relatively small amount of taxes this proposed foreign pipeline would possibly
4 generate. And, instead think about the perpetual and forever impacts of this
5 pipeline as it would have on the landowners specifically, first and foremost, but
6 also thereby upon the entire state of Nebraska, and to determine that neither the
7 preferred route nor the Keystone mainline alternative route are in the public
8 interest of the citizens of the state of Nebraska. And if the Commissioners were
9 inclined to modify TransCanada's proposed routes and were to be inclined to grant
10 an application for a route in Nebraska, that the only potential route that would
11 make any intelligent sense whatsoever would be twinning or near paralleling of
12 the proposed KXL with the existing Keystone I pipeline. The point of including
13 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
14 considered by TransCanada before. It simply does not make sense to add yet
15 another major oil pipeline crisscrossing our state creating new pumping stations,
16 creating new impacts on additional counties and communities and going through
17 all of the court processes with myself and other landowners like me when this
18 applicant already has relationships with the landowners, the towns and the
19 communities along Keystone I, and that Keystone I is firmly outside of the sand
20 hills and a significantly further portion away from the heart of the Ogallala
21 Aquifer than the preferred route or the Keystone mainline alternative route.

22 **Q: Does Attachment No. 8 here contain other documents you are competent to**
23 **speak about that you wish to be part of your testimony and to discuss in more**
24 **detail as needed at the August 2017 Hearing?**

25 A: Yes.

26 **Q: Are all of your statements in your testimony provided above true and**
27 **accurate as of the date you signed this document to the best of your**
28 **knowledge?**

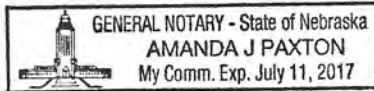
29 A: Yes, they are.

1 **Q:** Thank you, I have no further questions at this time and reserve the right to
2 ask you additional questions at the August 2017 Hearing.

Lloyd J Hipke
Lloyd Hipke

Subscribed and Sworn to me before this 30th day of May, 2017.

Amanda J Paxton
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

Application No: OP-003

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

**Direct Testimony of
Vencille Hipke in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Vencille Hipke.

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located at 47121 894th RD, Stuart, NE 68780 in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: What do you do for a living?**

EXHIBIT

26

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1 A: I ranch and farm with my husband and 3 sons and I am in charge of all the
2 bookwork.

3 **Q: If you are you married tell us your spouse's name please?**

4 A: Yes, going on 39 years to Lloyd.

5 **Q: If you have children how many do you have?**

6 A: We have 3 Sons. Cody, his wife and their daughter live on the same place as us.
7 Paul and Logan, their wives and families are within the close vicinity of our Home
8 place.

9 **Q: If you have grandchildren how many do you have?**

10 A: We have five Grandchildren.

11 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you
12 and or your family?**

13 A. Yes. Since this picture was taken we have 2 more Grandbabies and one on the
14 way.

15 **Q: For the land that would be affected and impacted by the proposed KXL tar
16 sands pipeline give the Commissioners a sense how long the land has been in
17 your family and a little history of the land.**

18 A: I have lived on this place my entire Adult life, going on 39 years now. My
19 husband and I have worked hard and put in a lot of long hours to develop this
20 "Home" place into a thriving business. I do not take lightly to anyone invading or
21 changing our property or the way we operate it. We have always respected the
22 land and have tried to preserve its delicate topsoil by leaving all the native grasses
23 as is by not tearing it up. To heal our land after any form of tillage would take
24 many years to regrow back to its natural state.

25 **Q: Do you earn any income from this land?**

26 A: Yes.

27 **Q: Have you depended on the income from your land to support your livelihood
28 or the livelihood of your family?**

1 A: Yes. Besides me and my husband, this land helps support our 3 sons, who are
2 employed by us. All 3 sons have returned to work for us on this land after
3 attending college (one serving in the Army before college). They have all left
4 home for a while and have all decided this is where they wanted to come back to
5 settle and make a living and their homes. I feel it our obligation to preserve our
6 land for them and their offspring and future generations.

7 **Q: Have you ever in the past or have you thought about in the future leasing all**
8 **or a portion of your land in question here?**

9 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
10 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
11 all the restrictions and risks and potential negative impacts to farming or ranching
12 operations as opposed to land that did not have those same risks. If I was looking
13 to lease or rent ground I would pay more for comparable non-pipeline land than I
14 would for comparable pipeline land and I think most folks would think the same
15 way. This is another negative economic impact that affects the landowner and the
16 county and the state and will forever and ever should TransCanada's preferred or
17 mainline alternative routes be approved. If they were to twin or closely parallel to
18 Keystone I the vast majority of landowners would be those that already have a
19 pipeline so there would be considerable less new incremental negative impacts.

20 **Q: Do you have similar concerns about selling the land?**

21 A: Well I hope not to have to sell the land in my lifetime but times change and you
22 never know what is around the corner and yes I am concerned that if another piece
23 of ground similar to mine were for sale and it did not have the pipeline and mine
24 did that I would have a lower selling price. I think this would be true for pipeline
25 ground on both the preferred and mainline alternative routes.

26 **Q: What is your intent with your land after you die?**

27 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
28 to come but I have thought about getting out if this pipeline were to come through.

1 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
2 **Pipeline would cross the land described above and owned by you?**

3 A: Yes.

4 **Q: Please describe your property that would be impacted by the potential**
5 **TransCanada's Keystone XL Pipeline?**

6 A: This is my Home place, where all the buildings and facilities are located. This
7 pipeline would cross both farmland and pastureland. It comes within a few feet of
8 our house well. The pipeline would dissect springs of water that flow into a dam
9 where all of our water for our cattle operation comes from. We background and
10 pasture over 1000 head of cattle per year and a leak into these springs or the dam
11 would be devastating to my operation. The reason we use the dam for watering
12 cattle is because we cannot get a well with sufficient volume to support the
13 number of cattle we run. Good wells are hard to get in our area. Water is essential
14 to our operation and we need to protect it to stay in business.

15 **Q: Where on your property does the proposed route run through?**

16 A: The proposed route comes within a few feet of our domestic well and would be
17 located in the recharge fields that supplies our drinking water. Beings the water
18 flows from West to East and the proposed pipeline is on the West side of this well
19 there is a possibility of any leak to naturally flow right into our well. I am not
20 certain if the well will be disturbed during construction process, it is that close.

21 **Q: Will this affect how you go about your lives on a daily basis?**

22 A: We don't feel we could ever feel safe about drinking or bathing in this water in the
23 future years without daily or at least weekly testing of the water in the event of an
24 underground compromise of the pipe (a leak that would go undetected below the
25 surface).

26 **Q: Is this well private or public?**

27 A: This is a private well.

28 **Q: Was this well registered when TransCanada chose the route?**

1 A: It was not registered as that was not required back in the day this well was
2 drilled. When Trans Canada chose this route I'm sure they did not take it into
3 account.

4 Q: **Did you notify TransCanada upon learning that the well was on their route?**

5 A: Upon learning that this well was on their route we called Trans Canada and invited
6 them to inspect the location of the well on the maps and from the road.

7 Q: **When did you notify TransCanada?**

8 A: This was sometime in February 2013.

9 Q: **Do you remember the name(s) of the land agents that visited you that day?**

10 A: Yes, and we still possess two Company cards given to us from Brock Taylor &
11 Van Shepardson who were land agents on behalf of TransCanada here that day.

12 Q: **How many other people were at the meeting?**

13 A: There were close to 10 people at this meeting and we know that at least one of
14 them was an Engineer, however he did not give us his card. We thought by them
15 actually "seeing" our well they might vary the route away from the well and we
16 did show them on the maps a better route, which they briefly went to see.

17 Q: **Did you receive any correspondence from TransCanada after the meeting?**

18 A: Later, after this meeting we received two other mail correspondences

19 Q: **What were enclosed with the two correspondences?**

20 A: Potential route maps from TransCanada

21 Q: **Did the routes vary to avoid the well?**

22 A: They did not vary the route at all to avoid this well.

23 Q: **Did you contact another agency to speak with them about the well issue?**

24 A: Yes, the Nebraska Department of Environmental Quality.

25 Q: **What did the NDEQ tell you?**

26 A: We were told TransCanada would probably just drill us a new well.

27 Q: **Even if that were true, does drilling a new well cause a problem for your**
28 **land?**

1 **A:** Yes. But the problem with drilling a new well is that it is near impossible to get a
2 "Good" well in our area, North of Stuart as any well man from this area will
3 testify, so we don't feel that is an option and certainly not an acceptable option. It
4 is too risky to sacrifice what we have now that we know is good and working.

5 **Q:** **Has TransCanada contacted you, since your initial meeting, about an**
6 **alternate route away from the well?**

7 **A:** To this day we have not seen any evidence or heard from TransCanada that they
8 have varied their route away from our well.

9 **Q:** **Is the well currently registered?**

10 **A:** Just recently we filed papers to register the well but have not received
11 confirmation from the State that it is done. How many other unregistered wells do
12 this proposed route not take into consideration?

13 **Q:** **Does the proposed route affect the water for your cattle as well?**

14 **A:** The proposed route dissects vital springs of water that flows into a dam that we
15 use to water our cattle with.

16 **Q:** **How many feeder cattle use the vital springs as their source of water?**

17 **A:** There are times when our feedlot numbers are up to 1000 head of feeder cattle that
18 use from this water source.

19 **Q:** **What happens to your cattle operation if the springs of water get**
20 **contaminated?**

21 **A:** If the springs of water that fill this dam becomes disrupted or contaminated our
22 Cattle operation will be compromised to the point of non-existence.

23 **Q:** **Are there other springs of water that your cattle drink out of?**

24 **A:** There are other springs of water farther out in the pastures that are dissected as
25 well and these flow into creeks & streams that our pasture cattle water out of.

26 **Q:** **How does the proposed route cut across your land?**

27 It is a diagonal cut across of our land

28 **Q:** **Does that raise any concerns to you?**

1 A: Yes, this also concerns us as to the use of ALL of the pastureland if they require
2 the fencing out of the pipeline, either for the "healing" process of new grasses
3 planted or to permanently keep cattle away from the pipeline.

4 Q: **How many pastures will the route affect?**

5 A: Two separate pastures

6 Q: **How will they be affected?**

7 A: They would be cut across diagonally and the land not on the side of the water
8 source would become useless without a water source. The lands would take a lot
9 of years to "heal" and be back to full potential, probably just to be dug up again in
10 the event of a leak or pipe replacement. We will lose use of a lot of our pasture
11 land and that means lost productive ground and lost income. This is a big
12 headache for us after TransCanada is long gone. Remember they want us to sign
13 an easement that is "Perpetual" and to their "assigns or successors" which means
14 FOREVER!

15 Q: **Does the pipeline run through any objects that will affect your land?**

16 A: Out in the pastureland are huge rocks which the proposed route would cross
17 thru. It is to our understanding that TransCanada would not have to bury the pipe
18 as deep thru these areas.

19 Q: **Do you have any concerns about this?**

20 A: This concerns us as to the heating up of the soil by the pipe being nearer to the
21 surface and the "healing" of the land so that it could ever be pastured again. The
22 inability of the land to heal will be followed by erosion on the
23 uneven surfaces. Also these rocks are constantly moving and emerging so the
24 possibility of them pushing into the pipe causing a rupture is possible, esp. during
25 an earthquake (we've felt them out here before!).

26 Q: **Will the value of your land decrease with the pipeline running through it?**

27 A: We have concerns as to the devaluation of our land. We have heard about
28 Banking institutions that are not loaning money and devaluing land on this
29 proposed route.

1 **Q: How does this affect the financial stability of your family and business?**

2 **A:** This greatly affects our Financial as this land is the soul of our operation, where all
3 the buildings and feedlots are located (our Homeplace). Our hope is to pass this
4 land on down to our three sons but they too will have deflated values on their
5 Financials FOREVER!

6 **Q: Do you have any concerns as to the safety of the pipeline?**

7 **A:** There are multiple concerns for us as to the Safety of this pipeline

8 **Q: Do you have any concerns that TransCanada may abandon the pipeline when**
9 **it is completed?**

10 **A:** Yes, this is extremely concerning about the ability for TransCanada to abandon the
11 dirty pipe in the ground whenever they want.

12 **Q: What are your concerns?**

13 **A:** We can't afford to take it out. They probably wouldn't even let us if we could.
14 And they are not offering to pay for their luxury of leaving it in place.

15 **Q: Do you have any concerns that the pipeline may contaminate your neighbors**
16 **land?**

17 **A:** We are concerned about Liability issues if the pipeline on our land contaminates
18 our neighbors land. We cannot afford Insurance or the cleanup costs if there is a
19 leak on our land and it affects our neighbors land and we get sued. We should not
20 have to be liable for Trans Canada's operation of this pipeline. I'm sure there will
21 be more concerns about this pipeline as we go forward, but these are the main ones
22 I have at this time.

23 **Q: Were you or an entity for which you are a member, shareholder, or director**
24 **previously sued by TransCanada Keystone Pipeline, LP?**

25 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
26 petition for condemnation against our land so it could place its proposed pipeline
27 within an easement that it wanted to take from us on our land.

28 **Q: Did you defend yourself and your land in that condemnation action?**

1 A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
2 and expenses in our resistance of TransCanada's lawsuit against us.

3 Q: **Has TransCanada reimbursed you for any of your expenses or costs for fees**
4 **incurred?**

5 A: No, they have not.

6 Q: **In its lawsuit against you, did TransCanada identify the amount of your**
7 **property that it wanted to take for its proposed pipeline?**

8 A: The lawsuit against us stated they would take the amount of property that is
9 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
10 and equipment reasonably necessary to operate the pipeline.

11 Q: **Did TransCanada define what they meant by "property that is reasonably**
12 **necessary"?**

13 A: No, they did not.

14 Q: **Did TransCanada in its lawsuit against you, identify the eminent domain**
15 **property portion of your land?**

16 A: Yes, they did.

17 Q: **Did TransCanada describe what rights it proposed to take related to the**
18 **eminent domain property on your land?**

19 A: Yes, they did.

20 Q: **What rights that they proposed to take did they describe?**

21 A: TransCanada stated that the eminent domain property will be used to "lay, relay,
22 operate, and maintain the pipeline and the plant and equipment reasonably
23 necessary to operate the pipeline, specifically including surveying, laying,
24 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
25 reconstructing, removing and abandoning one pipeline, together with all fittings,
26 cathodic protection equipment, pipeline markers, and all their equipment and
27 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
28 petroleum products, and all by-products thereof."

1 **Q:** Prior to filing an eminent domain lawsuit to take your land that
2 TransCanada identified, do you believe they attempted to negotiate in good
3 faith with you?

4 **A:** No, I do not.

5 **Q:** Did TransCanada at any time approach you with or deliver to you their
6 proposed easement and right-of-way agreement?

7 **A:** Yes, they did.

8 **Q:** At the time you reviewed TransCanada's easement and right-of-way
9 agreement, did you understand that they would be purchasing a fee title
10 interest in your property or that they were taking something else?

11 **A:** I understood that they proposed to have the power to take both a temporary
12 construction easement that could last for a certain period of time and then also a
13 permanent easement which they described to be 50 feet across or in width, and
14 that would run the entire portion of my property from where a proposed pipeline
15 would enter my property until where it would exit the property.

16 **Q:** Is the document included with your testimony here as Attachment No. 3, a
17 true and accurate copy of TransCanada's proposed Easement and Right-of-
18 Way agreement that they included with their condemnation lawsuit against
19 you?

20 **A:** Yes, it is.

21 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
22 and Right-of-Way agreement?

23 **A:** Yes, I have.

24 **Q:** What is your understanding of the significance of the Easement and Right-of-
25 Way agreement as proposed by TransCanada?

26 **A:** My understanding is that this is the document that will govern all of the rights and
27 obligations and duties as well as the limitations of what I can and cannot do and
28 how I and any future landowner and any person I invite to come onto my property

1 must behave as well as what TransCanada is and is not responsible for and how
2 they can use my land.

3 **Q: After reviewing TransCanada's proposed Easement and Right-of-Way**
4 **agreement do you have any concerns about any portions of it or any of the**
5 **language either included in the document or missing from the proposed**
6 **document?**

7 **A:** I have a number of significant concerns and worries about the document and how
8 the language included and the language not included potentially negatively
9 impacts my land and thereby potentially negatively impacts my community and
10 my state.

11 **Q: I would like you to walk the Commissioners through each and every one of**
12 **your concerns about TransCanada's proposed Easement and Right-of-Way**
13 **agreement so they can develop an understanding of how that language and**
14 **the terms of that contract, in your opinion, potentially negatively impacts you**
15 **and your land. So, if you can start at the beginning of that document and**
16 **let's work our way through it, okay?**

17 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
18 Easement and Right-of-Way agreement and how it negatively could affect my
19 property rights and my economic interests.

20 **Q: Okay, let's start with your first concern please.**

21 **A:** The very first sentence talks about consideration or how much money they will
22 pay to compensate me for all of the known and unknown affects and all of the
23 rights I am giving up and for all the things they get to do to my land and for what
24 they will prevent me from doing on my land and they only will pay me one time at
25 the signing of the easement agreement. That is a huge problem.

26 **Q: Explain to the Commissioners why that is a problem.**

27 **A:** It is not fair to the landowner, the county, or the State. It is not fair to the
28 landowner because they want to have my land forever for use as they see fit so
29 they can make a daily profit from their customers. If I was to lease ground from

1 my neighbor I would typically pay twice a year every year as long as they granted
2 me the rights to use their land. That only makes sense – that is fair. If I was going
3 to rent a house in town I would typically pay monthly, every month until I gave up
4 my right to use that house. By TransCanada getting out on the cheap and paying
5 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
6 revenue collection on the money I would be paid and then pay taxes on and
7 contribute to this state and this country. It is money I would be putting back into
8 my local community both spending and stimulating the local economy and
9 generating more economic activity right here. Instead TransCanada's shareholders
10 keep all that money and it never finds its way to Nebraska.

11 **Q: What is your next concern?**

12 A: The first paragraph goes on to say Grantor, which is me the landowner, “does
13 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
14 limited partnership...” and I have no idea who that really is. I have no idea who is
15 forcing this pipeline on us or who the owners of the entities are, or what are the
16 assets backing this limited partnership, or who the general partner is, or who all
17 the limited partners are, and who makes up the ownership of the these partners or
18 the structure or any of the basic things you would want to know and understand if
19 you would want to do business with such an outfit. According to TransCanada's
20 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
21 liability company called TransCanada Keystone Pipeline GP, LLC is the general
22 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
23 basically nothing. That is really scary since the general partner has the liability but
24 virtually none of the ownership and who knows if it has any other assets.

25 **Q: Do you think it is in the public interest of Nebraska to not be one-hundred**
26 **percent clear on exactly who could become the owner of over 275 miles of**
27 **Nebraska land?**

28 A: No.

1 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
2 percent clear on exactly who will be operating and responsible for
3 approximately 275 miles of tar sands pipeline underneath and through
4 Nebraska land?

5 **A:** No.

6 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
7 and the State of Nebraska of TransCanada's easement terms.

8 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
9 called "Grantee")..." and this concerns me because it would allow their easement
10 to be transferred or sold to someone or some company or country or who knows
11 what that I don't know and who we may not want to do business with. This
12 pipeline would be a huge asset for TransCanada and if they can sell to the highest
13 bidder that could have terrible impacts upon all of Nebraska depending upon who
14 may buy it and I don't know of any safeguards in place for us or the State to veto
15 or have any say so in who may own, operate, or be responsible for this pipeline in
16 the future.

17 **Q:** Do you think that type of uncertainty and lack of control over a major piece
18 of infrastructure crossing our State is in the public interest?

19 **A:** No, certainly not, in fact, just the opposite.

20 **Q:** What's next?

21 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
22 really concerns me. Why does the easement and right-of-way have to be perpetual
23 and permanent? That is the question myself and my family want an answer to.
24 Perpetual to me is like forever and that doesn't make sense.

25 **Q:** Why doesn't a perpetual Easement and Right-of-Way make sense to you?

26 **A:** For many reasons but mostly because the tar sands are finite. I am unaware of any
27 data proving there is a perpetual supply of tar sands. I am not aware in
28 TransCanada's application where it proves there is a perpetual necessity for this
29 pipeline. My understanding of energy infrastructure like wind towers is they have

1 a decommission plan and actually take the towers down when they become
2 obsolete or no longer needed. Nothing manmade lasts forever. My land however
3 will, and I want my family or future Nebraska families to have that land as
4 undisturbed as possible and it is not in my interest or the public interest of
5 Nebraska to be forced to give up perpetual and permanent rights in the land for
6 this specific kind of pipeline project.

7 **Q: Okay, what is your next concern?**

8 A: The easement language includes all these things TransCanada can do and it says
9 "...abandoning in place..." so they can just leave this pipeline under my ground
10 until the end of time just sitting there while they are not using it, but I am still
11 prevented from doing on my land and using my land what I would like. If I owned
12 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
13 there. It doesn't make sense and it scares me and it is not in my interest or the
14 public interest of Nebraska to allow this.

15 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
16 **right?**

17 A: Yes.

18 **Q: So now on the second page of the Easement what are your concerns?**

19 A: Here the Easement identifies a 24-month deadline to complete construction of the
20 pipeline but has caveats that are undefined and ambiguous. The 24-month period
21 starts to run from the moment "actual pipeline installation activities" begin on
22 Landowners property. It appears that TransCanada would define this phrase as
23 needed. It would be wise to explain what types of TransCanada action constitutes
24 "installation activity" For instance, would the placement and storage of an
25 excavator or other equipment on or near the Easement property be an activity or
26 would earth have to be moved before the activity requirement is triggered. This
27 vague phrase is likely to lead to future disputes and litigation that is not in the best
28 interest of the welfare of Nebraska and would not protect property interests. The
29 24-months can also be extended in the case of "force majeure." My understanding

1 is that force majeure is often used to insulate a party to a contract when events
2 occur that are completely out of their control. In TransCanada's easement this is
3 expanded to include "without limitation...availability of labor and materials."
4 Extending this language to labor and materials is problematic because these are
5 two variables that TransCanada does have some or significant control over and to
6 allow extension of the 24-month period over events not truly out of the control of
7 TransCanada and without further provision for compensation for the Landowner is
8 not conducive to protection of property rights.

9 **Q: Okay, what is your next concern?**

10 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
11 TransCanada and Landowner. In 1.A., the first sentence discusses "commercially
12 reasonable costs and expenses" will pay for damages caused but then limits
13 TransCanada's liability to certain circumstances. There is no definition of
14 "commercially reasonable" and no stated right that the Landowner would get to
15 determine the amounts of cost or expense that is "commercially reasonable."
16 TransCanada excepts out from their liability any damages that are caused by
17 Landowner's negligence or the negligence of anyone ever acting on the behalf of
18 Landowner. It is understandable that if the Landowner were to willfully and
19 intentionally cause damages to the pipeline that Landowner should be liable.
20 However, anything short of willful misconduct should be the liability of
21 TransCanada who is subjecting the pipeline on the Landowner and who is making
22 a daily profit from that pipeline. When evaluating the impact on property rights of
23 this provision, you must consider the potentially extremely expensive fight a
24 Landowner would have over this question of whether or not damage was an act of
25 negligence. Putting this kind of potential liability upon the Landowner is
26 incredibly problematic and is detrimental to the protection of property rights. I
27 don't think this unilateral power which I can't do anything about as the landowner
28 is in the best economic interest of the land in question or the State of Nebraska for
29 landowners to be treated that way.

1 **Q:** Is there any specific event or example you are aware of that makes this
2 concern more real for you?

3 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
4 Nemaha County, Nebraska landowner farmers who accidentally struck two
5 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
6 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
7 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
8 copy of the Federal Court Complaint is here as **Attachment No. 4.**

9 **Q:** What is your next concern with the Easement language?

10 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
11 they choose unless 1) any Landowner use interferes in any way with
12 TransCanada's exercise of any of its rights within the Easement, or 2)
13 TransCanada decides to take any action on the property it deems necessary to
14 prevent injury, endangerment or interference with anything TransCanada deems
15 necessary to do on the property. Landowner is also forbidden from excavating
16 without prior authorization by TransCanada. So my understanding is that
17 TransCanada will unilaterally determine what Landowner can and can't do based
18 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
19 could also completely deny my request to excavate. Further, TransCanada retains
20 all "privileges necessary or convenient for the full use of the rights" granted to
21 them in the Easement. Again, TransCanada unilaterally can decide to the
22 detriment of the property rights of Landowner what TransCanada believes is
23 necessary or convenient for it. And there is no option for any additional
24 compensation to landowner for any right exercised by TransCanada that leads to
25 the removal of trees or plants or vegetation or buildings or structures or facilities
26 owned by Landowner of any kind. Such undefined and unilateral restrictions and
27 rights without having to compensate Landowner for such further destruction or
28 losses are not conducive to the protection of property rights or economic interest.

29 **Q:** What is the next concern you have?

1 A: The Easement also allows some rights for Landowner but restricts them at the
2 same time and again at the sole and unilateral decision making of TransCanada.
3 TransCanada will determine if the actions of Landowner might in anyway
4 endanger or obstruct or interfere with TransCanada's full use of the Easement or
5 any appurtenances thereon to the pipeline itself or to their access to the Easement
6 or within the Easement and TransCanada retains the right at any time, whether
7 during growing season or not, to travel "within and along Easement Area on foot
8 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
9 retain the rights to prevent any landowner activity that it thinks may "unreasonably
10 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
11 undefined and unilateral restrictions are not conducive to the protection of
12 property rights or economic interest.

13 **Q: What is the next concern you have with the Easement language?**

14 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
15 Landowner's land any debris of any kind without any input or power of
16 Landowner to demand an alternative method or location of debris disposal. Such
17 unilateral powers would negatively affect Landowners property are not conducive
18 to the protection of property rights or economic interest.

19 **Q: What is the next concern you have with the Easement language?**

20 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
21 "where rock is encountered" mean and why does TransCanada solely get to
22 determine whether or not this phrase is triggered. This phrase could be used to
23 justify installing the pipeline 24 inches beneath the surface. The ability to use this
24 provision to minimal locate the pipeline at a depth of 24 inches could negatively
25 affect Landowners property are not conducive to the protection of property rights.
26 A shallow pipeline is much more likely to become a danger and liability in the
27 future given farming operations and buried irrigation lines and other factors
28 common to the current typical agricultural uses of the land in question impacted
29 by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative the their property in preparation or planning of TransCanada’s taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the

1 ability of the future Landowner to modify or negotiate any of the language in
2 question to which it will be held to comply.

3 **Q: What is the next concern you have with the Easement language?**

4 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
5 Easement to any person, company, country, etc. at their sole discretion at any time
6 to anyone. This also means that any buyer of the easement could do the same to a
7 third buyer and so on forever. There is no change of control or sale provision in
8 place to protect the Landowner or Nebraska or to provide compensation for such
9 change of control or ownership. It is not conducive to the protection of property
10 rights or economic interests to allow unilateral unrestricted sale of the Easement
11 thereby forcing upon the Landowner and our State a new unknown Easement
12 owner.

13 **Q: What is the next concern you have with the Easement language?**

14 A: There are many terms in the Easement that are either confusing or undefined terms
15 that are without context as to whether or not the Landowner would have any say
16 so in determining what these terms mean or if the evaluation is solely in
17 TransCanada's control. Some of these vague undefined terms are as follows:

- 18 i. "pipeline installation activities"
- 19 ii. "availability of labor and materials"
- 20 iii. "commercially reasonable costs and expenses"
- 21 iv. "reasonably anticipated and foreseeable costs and expenses"
- 22 v. "yield loss damages"
- 23 vi. "diminution in the value of the property"
- 24 vii. "substantially same condition"
- 25 viii. "an actual or potential hazard"
- 26 ix. "efficient"
- 27 x. "convenient"
- 28 xi. "endangered"
- 29 xii. "obstructed"

- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, "yield loss damages" should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can't afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

1 **Q:** Did TransCanada ever offer you financial compensation for the rights that
2 they sought to obtain in your land, and for what they sought to prevent you
3 and any future land owner of your property from doing in the future?

4 **A:** Yes, we received an offer from them.

5 **Q:** As the owner of the land in question and as the person who knows it better
6 than anyone else, do you believe that TransCanada offered you just, or fair,
7 compensation for all of what they proposed to take from you so that their tar
8 sands pipeline could be located across your property?

9 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
10 offer for all the potential impacts and effects and the rights that I'm giving up, and
11 what we will be prevented from doing in the future and how their pipeline would
12 impact my property for ever and ever.

13 **Q:** Has TransCanada at any time offered to compensate you annually, such as
14 wind farm projects do, for the existence of their potential tar sands pipeline
15 across your property.

16 **A:** No, never.

17 **Q:** At any time did TransCanada present you with or request that you, as the
18 owner of the land in question, sign and execute a document called, "Advanced
19 Release of Damage Claims and Indemnity Agreement?"

20 **A:** Yes, they did and it was included in the County Court lawsuit against us.

21 **Q:** Is Attachment No. 5, to your testimony here, a true and accurate copy of the
22 "Advanced Release of Damage Claims and Indemnity Agreement?"

23 **A:** Yes, it is.

24 **Q:** What was your understanding of that document?

25 **A:** When I read that document in the plain language of that document, it was my
26 understanding that TransCanada was attempting to pay me a very small amount at
27 that time in order for me to agree to give up my rights to be compensated from
28 them in the future related to any damage or impact they may have upon my

1 property "arising out of, in connection with, or alleged to resulted from
2 construction or surveying over, under or on" my land.

3 **Q: Did you ever sign that document?**

4 A: No, I did not.

5 **Q: Why not?**

6 A: Because I do not believe that it is fair or just to try to get me to agree to a small
7 sum of money when I have no idea how bad the impacts or damages that they, or
8 their contractors, or subcontractors, or other agents or employees, may cause on
9 my land at any time in the future that resulted from the construction or surveying
10 or their activities upon my land.

11 **Q: When you reviewed this document, what did it make you feel?**

12 A: I felt like it was simply another attempt for TransCanada to try to pay very little to
13 shield themselves against known and foreseeable impacts that their pipeline, and
14 the construction of it, would have upon my land. It made me feel that they knew it
15 was in their financial interest to pay me as little as possible to prevent me from
16 ever having the opportunity to seek fair compensation again, and that this must be
17 based upon their experience of unhappy landowners and situations in other places
18 where they have built pipelines.

19 **Q: Has TransCanada ever contacted you and specifically asked you if you**
20 **thought their proposed location of their proposed pipeline across your land**
21 **was in your best interest?**

22 A: No, they have not.

23 **Q: Has TransCanada ever contacted you and specifically asked you if you**
24 **thought their proposed location of their proposed pipeline across your land**
25 **was in the public interest of the State of Nebraska?**

26 A: No, they have not.

27 **Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the**
28 **Takings Clause?**

29 A: Yes, I am.

1 **Q:** What is your understanding of the Fifth Amendment as it relates to taking of
2 an American citizens property?

3 **A:** My understanding is that, according to the United States Constitution, that if the
4 government is going to take land for public use, then in that case, or by taking for
5 public use, it can only occur if the private land owner is compensated justly, or
6 fairly.

7 **Q:** Has TransCanada ever contacted you specially to explain the way in which
8 the public could use its proposed Keystone XL Pipeline?

9 **A:** No, they have not.

10 **Q:** Can you think of any way in which the public, that is the citizens of the State
11 of Nebraska, can directly use the proposed TransCanada Keystone XL
12 Pipeline, as it dissects the State of Nebraska?

13 **A:** No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
14 public benefits from this pipeline in any way, how they can use it any way, or how
15 it's in the public interest in any way. By looking at the map, it is quite clear to me
16 that the only reason it's proposed to come through Nebraska, is that because we
17 are geographically in the way from between where the privately-owned Tar Sands
18 are located to where TransCanada wants to ship the Tar Sands to refineries in
19 Houston, Texas.

20 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
21 crude petroleum, or oil and petroleum by-products that you would like to
22 ship in its pipeline?

23 **A:** No, it has not.

24 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
25 products that you, at this time or any time in the future, would desire to place
26 for transport within the proposed TransCanada Keystone XL Pipeline?

27 **A:** No, I do not.

1 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
2 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
3 products within the proposed TransCanada Keystone XL Pipeline?

4 **A:** No, I do not. I've never heard of such a person or company like that.

5 **Q:** Do you pay property taxes for the land that would be affected and impacted
6 at the proposed TransCanada Keystone XL Pipeline?

7 **A:** Yes, I do.

8 **Q:** Why do you pay property taxes on that land?

9 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
10 of that property.

11 **Q:** Because you follow the law and pay property taxes, do you believe you
12 deserve any special consideration or treatment apart from any other person
13 or company that pays property taxes?

14 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
15 just what you do.

16 **Q:** Do you believe the fact that you pay property taxes entitles you to special
17 treatment of any kind, or special rights of any kind?

18 **A:** No, of course not.

19 **Q:** Do you believe the fact that you pay property taxes on your land would be
20 enough to qualify you to have the power of eminent domain to take land of
21 your neighbors or other people in your county, or other people across the
22 state of Nebraska?

23 **A:** Well, of course not. Like I said, paying property taxes is the law, it's nothing that
24 I expect an award for or any type of special consideration.

25 **Q:** Have you at any time ever employed any person other than yourself?

26 **A:** Well, yes I have.

27 **Q:** Do you believe that the fact that you have, at some point in your life,
28 employed one or more other persons entitle you to any special treatment or

1 consideration above and beyond any other Nebraskan that has also employed
2 one or more persons?

3 A: No, of course not.

4 Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer
5 have at one point employed another person within this state, entitles you to
6 preferential treatment or consideration of any kind?

7 A: No, of course not. If I choose to employ someone that decision is up to me. I
8 don't deserve any special treatment or consideration for that fact.

9 Q: Do you have any concerns TransCanada's fitness as an applicant for a major
10 crude oil pipeline in its preferred location, or ultimate location across the
11 state of Nebraska?

12 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
13 or even bullied around and being made to feel scared that they did not have any
14 options but to sign whatever papers TransCanada told them they had to. I am
15 aware of folks being threatened that their land would be taken if they didn't follow
16 what TransCanada was saying. I am aware of tactics to get people to sign
17 easements that I don't believe have any place in Nebraska or anywhere, such as
18 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
19 landowners and convince them they should sign TransCanada's easement
20 agreements. I am aware of older folks and widows or widowers feeling they had
21 no choice but to sign TransCanada's Easement and they didn't know they could
22 fight or stand up for themselves. From a more practical standpoint, I am worried
23 that according to their answer to our Interrogatory No. 211, TransCanada only
24 owns and operates one (1) major oil pipeline. They simply do not have the
25 experience with this type of pipeline and that scares me. There are others but that
26 is what I can recollect at this time and if I remember more or my recollection is
27 refreshed I will share those with the Commissioners at the Hearing in August.

28 Q: Do you believe TransCanada's proposed method of compensation to you as a
29 landowner is reasonable or just?

1 **A:** No, I do not.

2 **Q:** Do you have any concern about limitations that the construction of this
3 proposed pipeline across your affected land would prevent construction of
4 future structures upon the portion of your land affected by the proposed
5 easement and immediately surrounding areas?

6 **A:** Well yes, of course I do. We would not be able to build any types of structures
7 directly across or touching the easement and it would be unwise and I would be
8 uncomfortable to build anything near the easement for fear of being blamed in the
9 future should any damage or difficulty result on my property in regards to the
10 pipeline. What if we would like to expand our feedlot operation? We are
11 researching installing a hoop building and this area might be where it would need
12 to go.

13 **Q:** Do you think such a restriction would impact you economically?

14 **A:** Well yes, of course. It restricts both me and my successors from growing and
15 expanding.

16 **Q:** How do you think such a restriction would impact you economically?

17 **A:** The future of this land may not be exactly how it's being used as of this moment,
18 and having the restrictions and limiting my ability to develop my land in certain
19 ways presents a huge negative economic impact on myself, my family, and any
20 potential future owner of the property. You have no idea how I or the future owner
21 may want to use this land in the future or the other land across Nebraska
22 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
23 ago it would have been hard to imagine all the advances that we have now or how
24 things change. Because the Easement is forever and TransCanada gets the rights in
25 my land forever we have to think with a very long term view. By placing their
26 pipeline on under across and through my land that prevents future development
27 which greatly negatively impacts future taxes and tax revenue that could have
28 been generated by the County and State but now will not. When you look at the
29 short blip of economic activity that the two years of temporary construction efforts

1 may bring, that is far outweighed by the perpetual and forever loss of opportunity
2 and restrictions TransCanada is forcing upon us and Nebraska.

3 **Q: Do you have any concerns about the environmental impact of the proposed**
4 **pipeline?**

5 A: Yes, I do.

6 **Q: What are some of those concerns?**

7 A: As an affected land owner and Nebraskan, I am concerned that any construction,
8 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
9 a detrimental impact upon the environment of my land specifically, as well as the
10 lands near my land and surrounding the proposed pipeline route.

11 **Q: Do you have any other environmental concerns?**

12 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
13 construction and/or maintenance and operation. I am concerned about spills and
14 leaks that TransCanada has had in the past and will have in the future. This could
15 be catastrophic to my operations or others and to my county and the State.

16 **Q: Do you have any thoughts regarding if there would be an impact upon the**
17 **natural resources on or near your property due to the proposed pipeline?**

18 A: Yes, I believe that any construction, operation, and/or maintenance of the
19 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
20 resources of my land, and the lands near and surrounding the proposed pipeline
21 route.

22 **Q: Do you have any worries about potential impacts from the proposed pipeline**
23 **to the soil of your land, or land near you?**

24 A: Yes, I believe that any construction, operation, and/or maintenance of the
25 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
26 our land, as well as land along and surrounding the proposed pipeline route. This
27 includes, but is not limited to, the reasons that we discussed above of disturbing
28 the soil composition and makeup as it has naturally existed for thousands and
29 millions of years. This disruption could be during the construction process and/or

1 any future maintenance or removal process. I'm gravely concerned about the
2 fertility and the loss of economic ability of my property to grow the crops, or grow
3 the grasses, or grow whatever it is at that time they exist on my property or that I
4 may want to grow in the future, or that a future owner may want to grow. The
5 land will never be the same as it exists now, undisturbed, after it is trenched up for
6 the proposed pipeline.

7 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
8 **upon the groundwater over your land, or surrounding lands?**

9 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
10 the proposed Keystone XL Pipeline would have a detrimental impact upon the
11 groundwater of not only under my land, but also near and surrounding the pipeline
12 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
13 simple and it is simply too valuable to our State and the country to put at
14 unreasonable risk.

15 **Q: Do you have any concern about the potential impact of the proposed pipeline**
16 **upon the surface water on, or near or around your land?**

17 A: Yes, I have significant concerns that any construction, operation, and/or
18 maintenance of the proposed Keystone XL Pipeline would have detrimental
19 impact upon the surface water of not only within my property boundary, but along
20 and near and surrounding the pipeline route, and in fact, across the state of
21 Nebraska.

22 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
23 **upon the wildlife and plants, other than your growing crops on or near your**
24 **land?**

25 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
26 the proposed Keystone XL Pipeline would have a detrimental impact upon the
27 wildlife and the plants, not only that are located on or can be found upon my land,
28 but also near and along the proposed pipeline route.

1 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
2 **fair market value of your land?**

3 A: Yes, I do. I am significantly concerned about how the existence of the proposed
4 pipeline underneath and across and through my property will negatively affect the
5 fair market value at any point in the future, especially at that point in which I
6 would need to sell the property, or someone in my family would need to sell the
7 property. I do not believe, and certainly would not be willing to pay, the same
8 price for land that had the pipeline located on it, versus land that did not. I hope
9 there is never a point where I'm in a position where I have to sell and have to
10 realize as much value as I can out of my land. But because it is my single largest
11 asset, I'm gravely concerned that the existence of the proposed Keystone XL
12 Pipeline upon my land will affect a buyer's willingness to pay as much as they
13 would've paid and as much as I could've received, if the pipeline were not upon
14 my property. There are just too many risks, unknowns, impacts and uncertainties,
15 not to mention all of the rights you give up by the nature of having the pipeline
16 due to having the easement that we have previously discussed, for any reasonable
17 person to think that the existence of the pipeline would not negatively affect my
18 property's value.

19 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
20 **testimony?**

21 A: Yes, I have.

22 **Q: Where have you seen that before?**

23 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
24 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
25 believe the portion of the alternative route shown here that is within Nebraska
26 essentially twins or parallels Keystone I.

27 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
28 **Application, and as found on Attachment No. 7, here to your testimony, is in**
29 **the public interest of Nebraska?**

1 A: No, I do not.

2 Q: Do you believe that the Keystone mainline alternative route as shown on
3 Attachment No. 7 included with your testimony here is a major oil pipeline
4 route that is in the public interest of Nebraska?

5 A: No, I do not.

6 Q: Do you believe the portion of what has been previously called the I-90
7 corridor alternative route, specifically for the portion of the proposed
8 pipeline within Nebraska as found in Attachment No. 6 to your testimony, is
9 in the public interest of Nebraska?

10 A: No, I do not.

11 Q: Do you believe there is any potential route for the proposed Keystone XL
12 Pipeline across, within, under, or through the State of Nebraska that is in the
13 public interest of the citizens of Nebraska?

14 A: No, I do not.

15 Q: Why do you hold that belief?

16 A: Because there simply is no public interest based on all of the factors that I am
17 aware and that I have read and that I have studied that this Commission is to
18 consider that would establish that a for-profit foreign-owned pipeline that simply
19 crosses Nebraska because we are geographically in the way between where tar
20 sands are in Canada to where it wants to ship it to in Texas could ever be in the
21 public interest of Nebraskans. We derive no benefit from this project. It is not for
22 public use. Nebraska is simply in the way and when all considerations are taken in
23 there is no net benefit of any kind for Nebraska should this project be placed in our
24 state. Even if there was some arguable "benefit" it is not enough to outweigh all
25 the negative impacts and concerns.

26 Q: What do you think about the applicant, TransCanada's argument that its
27 preferred route for its proposed Keystone XL Pipeline is in the public interest
28 of Nebraska because it may bring temporary jobs during the construction
29 phase to Nebraska?

1 A: First of all, not all jobs are created equally. Most jobs that are created, whether
2 temporary or on a permanent basis, don't come with a project that has all the
3 potential and foreseeable negative impacts, many of which we have discussed here
4 and other witnesses throughout the course of this hearing have and will discuss. If
5 I decide to hire and employ someone to help me out in my farming or ranching
6 business, I've created a job but I haven't done so at the risk or detrimental impact
7 to my land or my town or my county or my state. And I've hired someone who is
8 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
9 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
10 jobs are not created equal. Additionally, I understand from what I'm familiar with
11 from TransCanada's own statements that the jobs numbers they originally touted
12 were determined to be a minute fraction of the permanent jobs that had been
13 projected. According to their answer to our Interrogatory No. 191, TransCanada
14 has created only thirty-four (34) jobs within Nebraska working specifically on
15 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
16 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
17 Further, according to their answer to Interrogatory No. 199, TransCanada would
18 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
19 constructed on its Preferred Route or its Mainline Alternative Route.

20 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
21 **because it would cross your land?**

22 A: No, absolutely not. I am opposed to this project because it is not in the public
23 interest, neither within my community nor within our state.

24 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
25 **was to cross someone else's land?**

26 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
27 the fear and anxiety and potential foreseeable risks and negative impacts that this
28 type of a project carrying this type of product brings forced upon anyone in this
29 state or any other state.

1 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
2 **Pipeline to cross the state of Nebraska?**

3 A: I don't believe there is an intelligent route because as I have stated I don't believe
4 this project anywhere within Nebraska is within the public interest. However, if
5 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
6 had to go somewhere in the state of Nebraska, the only intelligent route I believe
7 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
8 preferred route and the mainline alternative routes are economic liabilities our
9 state cannot risk.

10 **Q: What do you rely upon to make that statement?**

11 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
12 already exists in that area is reason enough as it is not in our best interest or the
13 public interests to have more major oil pipelines crisscrossing our state. Second,
14 they have all the infrastructure already there in terms of relationships with the
15 counties and local officials and first responders along that route. Third, they have
16 already obtained easements from all the landowners along that route and have
17 relationships with them. Fourth, that route avoids our most sensitive soils, the
18 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
19 Aquifer. Sixth, they have already studied that route and previously offered it as an
20 alternative. Seventh, it just makes the most sense that as a state we would have
21 some intelligent policy of energy corridors and co-locating this type of
22 infrastructure near each other.

23 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
24 **like the Public Service Commissioners to consider in their review of**
25 **TransCanada's Application?**

26 A: No, I have not. I have shared that which I can think of as of the date I signed this
27 document below but other things may come to me or my memory may be
28 refreshed and I will add and address those things at the time of the Hearing in
29 August and address any additional items at that time as is necessary. Additionally,

1 I have not had an adequate amount of time to receive and review all of
2 TransCanada's answers to our discovery and the discovery of others so it was
3 impossible to competently and completely react to that in my testimony here and I
4 reserve the right to also address anything related to discovery that has not yet
5 concluded as of the date I signed this document below. Lastly, certain documents
6 requested have not yet been produced by TransCanada and therefore I may have
7 additional thoughts on those I will also share at the hearing as needed.

8 **Q: What is it that you are requesting the Public Service Commissioners do in**
9 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
10 **across Nebraska?**

11 A: I am respectfully and humbly requesting that the Commissioners think far beyond
12 a temporary job spike that this project may bring to a few counties and beyond the
13 relatively small amount of taxes this proposed foreign pipeline would possibly
14 generate. And, instead think about the perpetual and forever impacts of this
15 pipeline as it would have on the landowners specifically, first and foremost, but
16 also thereby upon the entire state of Nebraska, and to determine that neither the
17 preferred route nor the Keystone mainline alternative route are in the public
18 interest of the citizens of the state of Nebraska. And if the Commissioners were
19 inclined to modify TransCanada's proposed routes and were to be inclined to grant
20 an application for a route in Nebraska, that the only potential route that would
21 make any intelligent sense whatsoever would be twinning or near paralleling of
22 the proposed KXL with the existing Keystone I pipeline. The point of including
23 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
24 considered by TransCanada before. It simply does not make sense to add yet
25 another major oil pipeline crisscrossing our state creating new pumping stations,
26 creating new impacts on additional counties and communities and going through
27 all of the court processes with myself and other landowners like me when this
28 applicant already has relationships with the landowners, the towns and the
29 communities along Keystone I, and that Keystone I is firmly outside of the sand

1 hills and a significantly further portion away from the heart of the Ogallala

2 Aquifer than the preferred route or the Keystone mainline alternative route.

3 **Q: Does Attachment No. 8 here contain other documents you are competent to**
4 **speak about that you wish to be part of your testimony and to discuss in more**
5 **detail as needed at the August 2017 Hearing?**

6 **A: Yes.**

7 **Q: Are all of your statements in your testimony provided above true and**
8 **accurate as of the date you signed this document to the best of your**
9 **knowledge?**

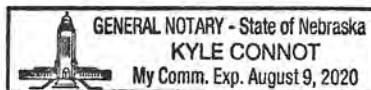
10 **A: Yes, they are.**

11 **Q: Thank you, I have no further questions at this time and reserve the right to**
12 **ask you additional questions at the August 2017 Hearing.**

Vencille Hipke
Vencille Hipke

Subscribed and Sworn to me before this 30 day of May, 2017.

[Signature]
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
R. Wynn Hipke in Support of
Landowner Intervenor**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is R. Wynn Hipke

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: Do you earn any income from this land?**

16 A: Yes.

EXHIBIT

27

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1 **Q: Have you depended on the income from your land to support your livelihood**
2 **or the livelihood of your family?**

3 A: Yes.

4 **Q: Have you ever in the past or have you thought about in the future leasing all**
5 **or a portion of your land in question here?**

6 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
7 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
8 all the restrictions and risks and potential negative impacts to farming or ranching
9 operations as opposed to land that did not have those same risks. If I was looking
10 to lease or rent ground I would pay more for comparable non-pipeline land than I
11 would for comparable pipeline land and I think most folks would think the same
12 way. This is another negative economic impact that affects the landowner and the
13 county and the state and will forever and ever should TransCanada's preferred or
14 mainline alternative routes be approved. If they were to twin or closely parallel to
15 Keystone I the vast majority of landowners would be those that already have a
16 pipeline so there would be considerable less new incremental negative impacts.

17 **Q: Do you have similar concerns about selling the land?**

18 A: Well I hope not to have to sell the land in my lifetime but times change and you
19 never know what is around the corner and yes I am concerned that if another piece
20 of ground similar to mine were for sale and it did not have the pipeline and mine
21 did that I would have a lower selling price. I think this would be true for pipeline
22 ground on both the preferred and mainline alternative routes.

23 **Q: What is your intent with your land after you die?**

24 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
25 to come but I have thought about getting out if this pipeline were to come through.

26 **Q: Are you aware that the preferred route of TransCanada's Keystone XL**
27 **Pipeline would cross the land described above and owned by you?**

28 A: Yes.

1 **Q:** Were you or an entity for which you are a member, shareholder, or director
2 **previously sued by TransCanada Keystone Pipeline, LP?**

3 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
4 petition for condemnation against our land so it could place its proposed pipeline
5 within an easement that it wanted to take from us on our land.

6 **Q:** Did you defend yourself and your land in that condemnation action?

7 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
8 and expenses in our resistance of TransCanada's lawsuit against us.

9 **Q:** Has TransCanada reimbursed you for any of your expenses or costs for fees
10 **incurred?**

11 **A:** No, they have not.

12 **Q:** In its lawsuit against you, did TransCanada identify the amount of your
13 **property that it wanted to take for its proposed pipeline?**

14 **A:** The lawsuit against us stated they would take the amount of property that is
15 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
16 and equipment reasonably necessary to operate the pipeline.

17 **Q:** Did TransCanada define what they meant by "property that is reasonably
18 **necessary"**?

19 **A:** No, they did not.

20 **Q:** Did TransCanada in its lawsuit against you, identify the eminent domain
21 **property portion of your land?**

22 **A:** Yes, they did.

23 **Q:** Did TransCanada describe what rights it proposed to take related to the
24 **eminent domain property on your land?**

25 **A:** Yes, they did.

26 **Q:** What rights that they proposed to take did they describe?

27 **A:** TransCanada stated that the eminent domain property will be used to "lay, relay,
28 operate, and maintain the pipeline and the plant and equipment reasonably
29 necessary to operate the pipeline, specifically including surveying, laying,

1 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
2 reconstructing, removing and abandoning one pipeline, together with all fittings,
3 cathodic protection equipment, pipeline markers, and all their equipment and
4 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
5 petroleum products, and all by-products thereof.”

6 **Q: Prior to filing an eminent domain lawsuit to take your land that**
7 **TransCanada identified, do you believe they attempted to negotiate in good**
8 **faith with you?**

9 **A:** No, I do not.

10 **Q: Did TransCanada at any time approach you with or deliver to you their**
11 **proposed easement and right-of-way agreement?**

12 **A:** Yes, they did.

13 **Q: At the time you reviewed TransCanada’s easement and right-of-way**
14 **agreement, did you understand that they would be purchasing a fee title**
15 **interest in your property or that they were taking something else?**

16 **A:** I understood that they proposed to have the power to take both a temporary
17 construction easement that could last for a certain period of time and then also a
18 permanent easement which they described to be 50 feet across or in width, and
19 that would run the entire portion of my property from where a proposed pipeline
20 would enter my property until where it would exit the property.

21 **Q: Is the document included with your testimony here as Attachment No. 2, a**
22 **true and accurate copy of TransCanada’s proposed Easement and Right-of-**
23 **Way agreement that they included with their condemnation lawsuit against**
24 **you?**

25 **A:** Yes, it is.

26 **Q: Have you had an opportunity to review TransCanada’s proposed Easement**
27 **and Right-of-Way agreement?**

28 **A:** Yes, I have.

1 **Q:** What is your understanding of the significance of the Easement and Right-of-
2 Way agreement as proposed by TransCanada?

3 **A:** My understanding is that this is the document that will govern all of the rights and
4 obligations and duties as well as the limitations of what I can and cannot do and
5 how I and any future landowner and any person I invite to come onto my property
6 must behave as well as what TransCanada is and is not responsible for and how
7 they can use my land.

8 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
9 agreement do you have any concerns about any portions of it or any of the
10 language either included in the document or missing from the proposed
11 document?

12 **A:** Yes, I have a number of significant concerns and worries about the document and
13 how the language included and the language not included potentially negatively
14 impacts my land and thereby potentially negatively impacts my community and
15 my state.

16 **Q:** I would like you to walk the Commissioners through each and every one of
17 your concerns about TransCanada's proposed Easement and Right-of-Way
18 agreement so they can develop an understanding of how that language and
19 the terms of that contract, in your opinion, potentially negatively impacts you
20 and your land. So, if you can start at the beginning of that document and
21 let's work our way through it, okay?

22 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
23 Easement and Right-of-Way agreement and how it negatively could affect my
24 property rights and my economic interests.

25 **Q:** Okay, let's start with your first concern please.

26 **A:** The very first sentence talks about consideration or how much money they will
27 pay to compensate me for all of the known and unknown affects and all of the
28 rights I am giving up and for all the things they get to do to my land and for what

1 they will prevent me from doing on my land and they only will pay me one time at
2 the signing of the easement agreement. That is a huge problem.

3 **Q: Explain to the Commissioners why that is a problem.**

4 A: It is not fair to the landowner, the county, or the State. It is not fair to the
5 landowner because they want to have my land forever for use as they see fit so
6 they can make a daily profit from their customers. If I was to lease ground from
7 my neighbor I would typically pay twice a year every year as long as they granted
8 me the rights to use their land. That only makes sense – that is fair. If I was going
9 to rent a house in town I would typically pay monthly, every month until I gave up
10 my right to use that house. By TransCanada getting out on the cheap and paying
11 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
12 revenue collection on the money I would be paid and then pay taxes on and
13 contribute to this state and this country. It is money I would be putting back into
14 my local community both spending and stimulating the local economy and
15 generating more economic activity right here. Instead TransCanada's shareholders
16 keep all that money and it never finds its way to Nebraska.

17 **Q: What is your next concern?**

18 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
19 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
20 limited partnership..." and I have no idea who that really is. I have no idea who is
21 forcing this pipeline on us or who the owners of the entities are, or what are the
22 assets backing this limited partnership, or who the general partner is, or who all
23 the limited partners are, and who makes up the ownership of the these partners or
24 the structure or any of the basic things you would want to know and understand if
25 you would want to do business with such an outfit. According to TransCanada's
26 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited
27 liability company called TransCanada Keystone Pipeline GP, LLC is the general
28 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

1 basically nothing. That is really scary since the general partner has the liability but
2 virtually none of the ownership and who knows if it has any other assets.

3 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
4 percent clear on exactly who could become the owner of over 275 miles of
5 Nebraska land?

6 **A:** No.

7 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
8 percent clear on exactly who will be operating and responsible for
9 approximately 275 miles of tar sands pipeline underneath and through
10 Nebraska land?

11 **A:** No.

12 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
13 and the State of Nebraska of TransCanada's easement terms.

14 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
15 called "Grantee")..." and this concerns me because it would allow their easement
16 to be transferred or sold to someone or some company or country or who knows
17 what that I don't know and who we may not want to do business with. This
18 pipeline would be a huge asset for TransCanada and if they can sell to the highest
19 bidder that could have terrible impacts upon all of Nebraska depending upon who
20 may buy it and I don't know of any safeguards in place for us or the State to veto
21 or have any say so in who may own, operate, or be responsible for this pipeline in
22 the future.

23 **Q:** Do you think that type of uncertainty and lack of control over a major piece
24 of infrastructure crossing our State is in the public interest?

25 **A:** No, certainly not, in fact, just the opposite.

26 **Q:** What's next?

27 **A:** Then it says "...a perpetual permanent easement and right-of-way..." and this
28 really concerns me. Why does the easement and right-of-way have to be perpetual

1 and permanent? That is the question myself and my family want an answer to.
2 Perpetual to me is like forever and that doesn't make sense.

3 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

4 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
5 data proving there is a perpetual supply of tar sands. I am not aware in
6 TransCanada's application where it proves there is a perpetual necessity for this
7 pipeline. My understanding of energy infrastructure like wind towers is they have
8 a decommission plan and actually take the towers down when they become
9 obsolete or no longer needed. Nothing manmade lasts forever. My land however
10 will, and I want my family or future Nebraska families to have that land as
11 undisturbed as possible and it is not in my interest or the public interest of
12 Nebraska to be forced to give up perpetual and permanent rights in the land for
13 this specific kind of pipeline project.

14 **Q: Okay, what is your next concern?**

15 A: The easement language includes all these things TransCanada can do and it says
16 "...abandoning in place..." so they can just leave this pipeline under my ground
17 until the end of time just sitting there while they are not using it, but I am still
18 prevented from doing on my land and using my land what I would like. If I owned
19 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
20 there. It doesn't make sense and it scares me and it is not in my interest or the
21 public interest of Nebraska to allow this.

22 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
23 **right?**

24 A: Yes.

25 **Q: So now on the second page of the Easement what are your concerns?**

26 A: Here the Easement identifies a 24-month deadline to complete construction of the
27 pipeline but has caveats that are undefined and ambiguous. The 24-month period
28 starts to run from the moment "actual pipeline installation activities" begin on
29 Landowners property. It appears that TransCanada would define this phrase as

1 needed. It would be wise to explain what types of TransCanada action constitutes
2 “installation activity” For instance, would the placement and storage of an
3 excavator or other equipment on or near the Easement property be an activity or
4 would earth have to be moved before the activity requirement is triggered. This
5 vague phrase is likely to lead to future disputes and litigation that is not in the best
6 interest of the welfare of Nebraska and would not protect property interests. The
7 24-months can also be extended in the case of “force majeure.” My understanding
8 is that force majeure is often used to insulate a party to a contract when events
9 occur that are completely out of their control. In TransCanada’s easement this is
10 expanded to include “without limitation...availability of labor and materials.”
11 Extending this language to labor and materials is problematic because these are
12 two variables that TransCanada does have some or significant control over and to
13 allow extension of the 24-month period over events not truly out of the control of
14 TransCanada and without further provision for compensation for the Landowner is
15 not conducive to protection of property rights.

16 **Q: Okay, what is your next concern?**

17 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
18 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
19 reasonable costs and expenses” will pay for damages caused but then limits
20 TransCanada’s liability to certain circumstances. There is no definition of
21 “commercially reasonable” and no stated right that the Landowner would get to
22 determine the amounts of cost or expense that is “commercially reasonable.”
23 TransCanada excepts out from their liability any damages that are caused by
24 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
25 Landowner. It is understandable that if the Landowner were to willfully and
26 intentionally cause damages to the pipeline that Landowner should be liable.
27 However, anything short of willful misconduct should be the liability of
28 TransCanada who is subjecting the pipeline on the Landowner and who is making
29 a daily profit from that pipeline. When evaluating the impact on property rights of

1 this provision, you must consider the potentially extremely expensive fight a
2 Landowner would have over this question of whether or not damage was an act of
3 negligence. Putting this kind of potential liability upon the Landowner is
4 incredibly problematic and is detrimental to the protection of property rights. I
5 don't think this unilateral power which I can't do anything about as the landowner
6 is in the best economic interest of the land in question or the State of Nebraska for
7 landowners to be treated that way.

8 **Q: Is there any specific event or example you are aware of that makes this**
9 **concern more real for you?**

10 **A:** Yes, one need not look further than a November 3, 2015 lawsuit filed against
11 Nemaha County, Nebraska landowner farmers who accidentally struck two
12 Magellan Midstream Partners, LP pipelines, one used to transport a mixture of
13 gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged
14 negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate
15 copy of the Federal Court Complaint is here as **Attachment No. 3.**

16 **Q: What is your next concern with the Easement language?**

17 **A:** Paragraph 3 states that Landowner can farm on and otherwise use their property as
18 they choose unless 1) any Landowner use interferes in any way with
19 TransCanada's exercise of any of its rights within the Easement, or 2)
20 TransCanada decides to take any action on the property it deems necessary to
21 prevent injury, endangerment or interference with anything TransCanada deems
22 necessary to do on the property. Landowner is also forbidden from excavating
23 without prior authorization by TransCanada. So my understanding is that
24 TransCanada will unilaterally determine what Landowner can and can't do based
25 upon how TransCanada chooses to define the terms in paragraph 3. TransCanada
26 could also completely deny my request to excavate. Further, TransCanada retains
27 all "privileges necessary or convenient for the full use of the rights" granted to
28 them in the Easement. Again, TransCanada unilaterally can decide to the
29 detriment of the property rights of Landowner what TransCanada believes is

1 necessary or convenient for it. And there is no option for any additional
2 compensation to landowner for any right exercised by TransCanada that leads to
3 the removal of trees or plants or vegetation or buildings or structures or facilities
4 owned by Landowner of any kind. Such undefined and unilateral restrictions and
5 rights without having to compensate Landowner for such further destruction or
6 losses are not conducive to the protection of property rights or economic interest.

7 **Q: What is the next concern you have?**

8 A: The Easement also allows some rights for Landowner but restricts them at the
9 same time and again at the sole and unilateral decision making of TransCanada.
10 TransCanada will determine if the actions of Landowner might in anyway
11 endanger or obstruct or interfere with TransCanada's full use of the Easement or
12 any appurtenances thereon to the pipeline itself or to their access to the Easement
13 or within the Easement and TransCanada retains the right at any time, whether
14 during growing season or not, to travel "within and along Easement Area on foot
15 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
16 retain the rights to prevent any landowner activity that it thinks may "unreasonably
17 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
18 undefined and unilateral restrictions are not conducive to the protection of
19 property rights or economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
22 Landowner's land any debris of any kind without any input or power of
23 Landowner to demand an alternative method or location of debris disposal. Such
24 unilateral powers would negatively affect Landowners property are not conducive
25 to the protection of property rights or economic interest.

26 **Q: What is the next concern you have with the Easement language?**

27 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
28 "where rock is encountered" mean and why does TransCanada solely get to
29 determine whether or not this phrase is triggered. This phrase could be used to

1 justify installing the pipeline 24 inches beneath the surface. The ability to use this
2 provision to minimal locate the pipeline at a depth of 24 inches could negatively
3 affect Landowners property are not conducive to the protection of property rights.
4 A shallow pipeline is much more likely to become a danger and liability in the
5 future given farming operations and buried irrigation lines and other factors
6 common to the current typical agricultural uses of the land in question impacted
7 by TransCanada's preferred pipeline route.

8 **Q: What is the next concern you have with the Easement language?**

9 A: There are more vague concepts solely at the determination of TransCanada such as
10 "as nearly as practicable" and "pre-construction position" and "extent reasonably
11 possible." There is nothing here that defines this or provides a mechanism for
12 documenting or memorializing "pre-construction position" so as to minimize
13 costly legal battles or wasted Landowner time attempting to recreate the soil
14 condition on their fields or pasture. Such unilateral powers would negatively affect
15 Landowners property are not conducive to the protection of property rights or
16 economic interest.

17 **Q: What is the next concern you have with the Easement language?**

18 A: TransCanada maintains the unilateral right to abandon the pipeline and all
19 appurtenances thereto in place on, under, across, or through Nebraska land at any
20 time it chooses. There is no provision for Landowner compensation for such
21 abandonment nor any right for the Landowner to demand removal. Such unilateral
22 powers would negatively affect Landowners property are not conducive to the
23 protection of property rights or economic interest.

24 **Q: What is the next concern you have with the Easement language?**

25 A: TransCanada has the power to unilaterally move or modify the location of any
26 Easement area whether permanent or temporary at their sole discretion.
27 Regardless, if Landowner has taken prior steps relative to their property in
28 preparation or planning of TransCanada's taking of the initial easement area(s),
29 the language here does not require TransCanada to compensate the Landowner if

1 they decide to move the easement anywhere on Landowners property. Such
2 unilateral powers would negatively affect Landowners property are not conducive
3 to the protection of property rights or economic interests.

4 **Q: What is the next concern you have with the Easement language?**

5 A: The Easement requires that all of the burdens and restrictions upon Landowner to
6 transfer and be applicable to any future owner of the Land in question without the
7 ability of the future Landowner to modify or negotiate any of the language in
8 question to which it will be held to comply.

9 **Q: What is the next concern you have with the Easement language?**

10 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
11 Easement to any person, company, country, etc. at their sole discretion at anytime
12 to anyone. This also means that any buyer of the easement could do the same to a
13 third buyer and so on forever. There is no change of control or sale provision in
14 place to protect the Landowner or Nebraska or to provide compensation for such
15 change of control or ownership. It is not conducive to the protection of property
16 rights or economic interests to allow unilateral unrestricted sale of the Easement
17 thereby forcing upon the Landowner and our State a new unknown Easement
18 owner.

19 **Q: What is the next concern you have with the Easement language?**

20 A: There are many terms in the Easement that are either confusing or undefined terms
21 that are without context as to whether or not the Landowner would have any say
22 so in determining what these terms mean or if the evaluation is solely in
23 TransCanada's control. Some of these vague undefined and ambiguous terms are
24 as follows:

- 25 i. "pipeline installation activities"
- 26 ii. "availability of labor and materials"
- 27 iii. "commercially reasonable costs and expenses"
- 28 iv. "reasonably anticipated and foreseeable costs and expenses"
- 29 v. "yield loss damages"

1 vi. “diminution in the value of the property”

2 vii. “substantially same condition”

3 viii. “an actual or potential hazard”

4 ix. “efficient”

5 x. “convenient”

6 xi. “endangered”

7 xii. “obstructed”

8 xiii. “injured”

9 xiv. “interfered with”

10 xv. “impaired”

11 xvi. “suitable crossings”

12 xvii. “where rock is encountered”

13 xviii. “as nearly as practicable”

14 xix. “pre-construction position”

15 xx. “pre-construction grade”

16 xxi. “various engineering factors”

17 Each one of these above terms and phrases as read in the context of the Easement
18 could be problematic in many ways. Notably, undefined terms tend to only get
19 definition in further legal proceedings after a dispute arises and the way the
20 Easement is drafted, TransCanada has sole power to determine when and if a
21 particular situation conforms with or triggers rights affected by these terms. For
22 instance, “yield loss damages” should be specifically defined and spelled out
23 exactly how the landowner is to be compensated and in what events on the front
24 end. I can’t afford to fight over this after the damage has occurred. Unfortunately,
25 the Landowner is without contractual rights to define these terms or determine
26 when rights related to them trigger and what the affects may be.

27 **Q: Do you have any other concerns about the Easement language that you can**
28 **think of at this time?**

1 A: I reserve the right to discuss any additional concerns that I think of at the time of
2 my live testimony in August.

3 Q: Based upon what you have shared with the Commission above regarding
4 TransCanada's proposed Easement terms and agreement, do you believe
5 those to be reasonable or just, under the circumstances of the pipeline's
6 impact upon you and your land?

7 A: No, I do not believe those terms to be reasonable or just for the reasons that we
8 discussed previously.

9 Q: Did TransCanada ever offer you financial compensation for the rights that
10 they sought to obtain in your land, and for what they sought to prevent you
11 and any future land owner of your property from doing in the future?

12 A: Yes, we received an offer from them.

13 Q: As the owner of the land in question and as the person who knows it better
14 than anyone else, do you believe that TransCanada offered you just, or fair,
15 compensation for all of what they proposed to take from you so that their tar
16 sands pipeline could be located across your property?

17 A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
18 offer for all the potential impacts and effects and the rights that I'm giving up, and
19 what we will be prevented from doing in the future and how their pipeline would
20 impact my property for ever and ever.

21 Q: Has TransCanada at any time offered to compensate you annually, such as
22 wind farm projects do, for the existence of their potential tar sands pipeline
23 across your property.

24 A: No, never.

25 Q: At any time did TransCanada present you with or request that you, as the
26 owner of the land in question, sign and execute a document called, "Advanced
27 Release of Damage Claims and Indemnity Agreement?"

28 A: Yes, they did and it was included in the County Court lawsuit against us.

1 **Q:** Is Attachment No. 4, to your testimony here, a true and accurate copy of the
2 "Advanced Release of Damage Claims and Indemnity Agreement?"

3 **A:** Yes, it is.

4 **Q:** What was your understanding of that document?

5 **A:** When I read that document in the plain language of that document, it was my
6 understanding that TransCanada was attempting to pay me a very small amount at
7 that time in order for me to agree to give up my rights to be compensated from
8 them in the future related to any damage or impact they may have upon my
9 property "arising out of, in connection with, or alleged to resulted from
10 construction or surveying over, under or on" my land.

11 **Q:** Did you ever sign that document?

12 **A:** No, I did not.

13 **Q:** Why not?

14 **A:** Because I do not believe that it is fair or just to try to get me to agree to a small
15 sum of money when I have no idea how bad the impacts or damages that they, or
16 their contractors, or subcontractors, or other agents or employees, may cause on
17 my land at any time in the future that resulted from the construction or surveying
18 or their activities upon my land.

19 **Q:** When you reviewed this document, what did it make you feel?

20 **A:** I felt like it was simply another attempt for TransCanada to try to pay very little to
21 shield themselves against known and foreseeable impacts that their pipeline, and
22 the construction of it, would have upon my land. It made me feel that they knew it
23 was in their financial interest to pay me as little as possible to prevent me from
24 ever having the opportunity to seek fair compensation again, and that this must be
25 based upon their experience of unhappy landowners and situations in other places
26 where they have built pipelines.

27 **Q:** Has TransCanada ever contacted you and specifically asked you if you
28 thought their proposed location of their proposed pipeline across your land
29 was in your best interest?

1 A: No, they have not.

2 Q: Has TransCanada ever contacted you and specifically asked you if you
3 thought their proposed location of their proposed pipeline across your land
4 was in the public interest of the State of Nebraska?

5 A: No, they have not.

6 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
7 Takings Clause?

8 A: Yes, I am.

9 Q: What is your understanding of the Fifth Amendment as it relates to taking of
10 an American citizens property?

11 A: My understanding is that, according to the United States Constitution, that if the
12 government is going to take land for public use, then in that case, or by taking for
13 public use, it can only occur if the private land owner is compensated justly, or
14 fairly.

15 Q: Has TransCanada ever contacted you specially to explain the way in which
16 the public could use its proposed Keystone XL Pipeline?

17 A: No, they have not.

18 Q: Can you think of any way in which the public, that is the citizens of the State
19 of Nebraska, can directly use the proposed TransCanada Keystone XL
20 Pipeline, as it dissects the State of Nebraska?

21 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
22 public benefits from this pipeline in any way, how they can use it any way, or how
23 it's in the public interest in any way. By looking at the map, it is quite clear to me
24 that the only reason it's proposed to come through Nebraska, is that because we
25 are geographically in the way from between where the privately-owned Tar Sands
26 are located to where TransCanada wants to ship the Tar Sands to refineries in
27 Houston, Texas.

1 **Q:** Has TransCanada ever contacted you and asked you if you had any tar sands,
2 crude petroleum, or oil and petroleum by-products that you would like to
3 ship in its pipeline?

4 **A:** No, it has not.

5 **Q:** Do you have any tar sands, crude petroleum, or oil and petroleum by-
6 products that you, at this time or any time in the future, would desire to place
7 for transport within the proposed TransCanada Keystone XL Pipeline?

8 **A:** No, I do not.

9 **Q:** Do you know anyone in the state of Nebraska who would be able to ship any
10 Nebraska-based tar sands, crude petroleum, or oil and petroleum by-
11 products within the proposed TransCanada Keystone XL Pipeline?

12 **A:** No, I do not. I've never heard of such a person or company like that.

13 **Q:** Do you pay property taxes for the land that would be affected and impacted
14 at the proposed TransCanada Keystone XL Pipeline?

15 **A:** Yes, I do.

16 **Q:** Why do you pay property taxes on that land?

17 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
18 of that property.

19 **Q:** Because you follow the law and pay property taxes, do you believe you
20 deserve any special consideration or treatment apart from any other person
21 or company that pays property taxes?

22 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
23 just what you do.

24 **Q:** Do you believe the fact that you pay property taxes entitles you to special
25 treatment of any kind, or special rights of any kind?

26 **A:** No, of course not.

27 **Q:** Do you believe the fact that you pay property taxes on your land would be
28 enough to qualify you to have the power of eminent domain to take land of

1 **your neighbors or other people in your county, or other people across the**
2 **state of Nebraska?**

3 A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that
4 I expect an award for or any type of special consideration.

5 Q: **Have you at any time ever employed any person other than yourself?**

6 A: Well, yes I have.

7 Q: **Do you believe that the fact that you have, at some point in your life,**
8 **employed one or more other persons entitle you to any special treatment or**
9 **consideration above and beyond any other Nebraskan that has also employed**
10 **one or more persons?**

11 A: No, of course not.

12 Q: **Do you believe that the fact that you, as a Nebraska land owner and taxpayer**
13 **have at one point employed another person within this state, entitles you to**
14 **preferential treatment or consideration of any kind?**

15 A: No, of course not. If I choose to employ someone that decision is up to me. I
16 don't deserve any special treatment or consideration for that fact.

17 Q: **Do you have any concerns TransCanada's fitness as an applicant for a major**
18 **crude oil pipeline in its preferred location, or ultimate location across the**
19 **state of Nebraska?**

20 A: Yes, I have significant concerns. I am aware of landowners being treated unfairly
21 or even bullied around and being made to feel scared that they did not have any
22 options but to sign whatever papers TransCanada told them they had to. I am
23 aware of folks being threatened that their land would be taken if they didn't follow
24 what TransCanada was saying. I am aware of tactics to get people to sign
25 easements that I don't believe have any place in Nebraska or anywhere such as
26 TransCanada or some outfit associated with it hiring a pastor or priest to pray with
27 landowners and convince them they should sign TransCanada's easement
28 agreements. I am aware of older folks and widows or widowers feeling they had
29 no choice but to sign TransCanada's Easement and they didn't know they could

1 fight or stand up for themselves. From a more practical standpoint, I am worried
2 that according to their answer to our Interrogatory No. 211, TransCanada only
3 owns and operates one (1) major oil pipeline. They simply do not have the
4 experience with this type of pipeline and that scares me. There are others but that
5 is what I can recollect at this time and if I remember more or my recollection is
6 refreshed I will share those with the Commissioners at the Hearing in August.

7 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
8 **landowner is reasonable or just?**

9 **A:** No, I do not.

10 **Q: Do you have any concern about limitations that the construction of this**
11 **proposed pipeline across your affected land would prevent construction of**
12 **future structures upon the portion of your land affected by the proposed**
13 **easement and immediately surrounding areas?**

14 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
15 structures directly across or touching the easement, and it would be unwise and I
16 would be uncomfortable to build anything near the easement for fear of being
17 blamed in the future should any damage or difficulty result on my property in
18 regards to the pipeline.

19 **Q: Do you think such a restriction would impact you economically?**

20 **A:** Well yes, of course.

21 **Q: How do you think such a restriction would impact you economically?**

22 **A:** The future of this land may not be exactly how it's being used as of this moment,
23 and having the restrictions and limiting my ability to develop my land in certain
24 ways presents a huge negative economic impact on myself, my family, and any
25 potential future owner of the property. You have no idea how I or the future owner
26 may want to use this land in the future or the other land across Nebraska
27 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years
28 ago it would have been hard to imagine all the advances that we have now or how
29 things change. Because the Easement is forever and TransCanada gets the rights in

1 my land forever we have to think with a very long term view. By placing their
2 pipeline on under across and through my land that prevents future development
3 which greatly negatively impacts future taxes and tax revenue that could have
4 been generated by the County and State but now will not. When you look at the
5 short blip of economic activity that the two years of temporary construction efforts
6 may bring, that is far outweighed by the perpetual and forever loss of opportunity
7 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
8 easement must be addressed in order for the Commission to truly consider
9 property rights, economic interests, the welfare of Nebraska, and the balancing of
10 the proposed routes against all they will affect and impact.

11 **Q: Do you have any concerns about the environmental impact of the proposed**
12 **pipeline?**

13 A: Yes, I do.

14 **Q: What are some of those concerns?**

15 A: As an affected land owner and Nebraskan, I am concerned that any construction,
16 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
17 a detrimental impact upon the environment of my land specifically, as well as the
18 lands near my land and surrounding the proposed pipeline route.

19 **Q: Do you have any other environmental concerns?**

20 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
21 construction and/or maintenance and operation. I am concerned about spills and
22 leaks that TransCanada has had in the past and will have in the future. This could
23 be catastrophic to my operations or others and to my county and the State.

24 **Q: Do you have any thoughts regarding if there would be an impact upon the**
25 **natural resources on or near your property due to the proposed pipeline?**

26 A: Yes, I believe that any construction, operation, and/or maintenance of the
27 proposed Keystone XL Pipeline would have detrimental impacts upon the natural
28 resources of my land, and the lands near and surrounding the proposed pipeline
29 route.

1 **Q: Do you have any worries about potential impacts from the proposed pipeline**
2 **to the soil of your land, or land near you?**

3 A: Yes, I believe that any construction, operation, and/or maintenance of the
4 proposed Keystone XL Pipeline would have a detrimental impact upon the soil of
5 land, as well as land along and surrounding the proposed pipeline route. This
6 includes, but is not limited to, the reasons that we discussed above of disturbing
7 the soil composition and makeup as it has naturally existed for thousands and
8 millions of years during the construction process, and any future maintenance or
9 removal process. I'm gravely concerned about the fertility and the loss of
10 economic ability of my property to grow the crops, or grow the grasses, or grow
11 whatever it is at that time they exist on my property or that I may want to grow in
12 the future, or that a future owner may want to grow. The land will never be the
13 same from as it exists now undisturbed to after it is trenched up for the proposed
14 pipeline.

15 **Q: Do you have any concerns about the potential impact of the proposed pipeline**
16 **upon the groundwater over your land, or surrounding lands?**

17 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
18 the proposed Keystone XL Pipeline would have a detrimental impact upon the
19 groundwater of not only under my land, but also near and surrounding the pipeline
20 route, and in fact, potentially the entire State of Nebraska. Water is life plain and
21 simple and it is simply too valuable to our State and the country to put at
22 unreasonable risk.

23 **Q: Do you have any concern about the potential impact of the proposed pipeline**
24 **upon the surface water on, or near or around your land?**

25 A: Yes, I have significant concerns that any construction, operation, and/or
26 maintenance of the proposed Keystone XL Pipeline would have detrimental
27 impact upon the surface water of not only within my property boundary, but along
28 and near and surrounding the pipeline route, and in fact, across the state of
29 Nebraska.

1 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
2 **upon the wildlife and plants, other than your growing crops on or near your**
3 **land?**

4 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
5 the proposed Keystone XL Pipeline would have a detrimental impact upon the
6 wildlife and the plants, not only that are located on or can be found upon my land,
7 but also near and along the proposed pipeline route.

8 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
9 **fair market value of your land?**

10 A: Yes, I do. I am significantly concerned about how the existence of the proposed
11 pipeline underneath and across and through my property will negatively affect the
12 fair market value at any point in the future, especially at that point in which I
13 would need to sell the property, or someone in my family would need to sell the
14 property. I do not believe, and certainly would not be willing to pay, the same
15 price for land that had the pipeline located on it, versus land that did not. I hope
16 there is never a point where I'm in a position where I have to sell and have to
17 realize as much value as I can out of my land. But because it is my single largest
18 asset, I'm gravely concerned that the existence of the proposed Keystone XL
19 Pipeline upon my land will affect a buyer's willingness to pay as much as they
20 would've paid and as much as I could've received, if the pipeline were not upon
21 my property. There are just too many risks, unknowns, impacts and uncertainties,
22 not to mention all of the rights you give up by the nature of having the pipeline
23 due to having the easement that we have previously discussed, for any reasonable
24 person to think that the existence of the pipeline would not negatively affect my
25 property's value.

26 **Q: Have you ever seen the document that's marked as Attachment No. 5, to your**
27 **testimony?**

28 A: Yes, I have.

29 **Q: Where have you seen that before?**

1 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
2 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
3 believe the portion of the alternative route in Nebraska essentially twins or
4 parallels Keystone I.

5 **Q: Do you believe the portion of the proposed pipeline route within Nebraska as**
6 **found in Attachment No. 5 to your testimony, is in the public interest of**
7 **Nebraska?**

8 A: No, I do not.

9 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
10 **Application, and as found on Attachment No. 6, here to your testimony, is in**
11 **the public interest of Nebraska?**

12 A: No, I do not.

13 **Q: Do you believe that the Keystone mainline alternative route as shown on**
14 **Attachment No. 6 included with your testimony here is a major oil pipeline**
15 **route that is in the public interest of Nebraska?**

16 A: No, I do not.

17 **Q: Do you believe there is any potential route for the proposed Keystone XL**
18 **Pipeline across, within, under, or through the State of Nebraska that is in the**
19 **public interest of the citizens of Nebraska?**

20 A: No, I do not.

21 **Q: Why do you hold that belief?**

22 A: Because there simply is no public interest based on all of the factors that I am
23 aware and that I have read and that I have studied that this Commission is to
24 consider that would establish that a for-profit foreign-owned pipeline that simply
25 crosses Nebraska because we are geographically in the way between where tar
26 sands are in Canada to where it wants to ship it to in Texas could ever be in the
27 public interest of Nebraskans. We derive no benefit from this project. It is not for
28 public use. Nebraska is simply in the way and when all considerations are taken in
29 there is no net benefit of any kind for Nebraska should this project be placed in our

1 state. Even if there was some arguable “benefit” it is not enough to outweigh all
2 the negative impacts and concerns.

3 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
4 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
5 **of Nebraska because it may bring temporary jobs during the construction**
6 **phase to Nebraska?**

7 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
8 temporary or on a permanent basis, don’t come with a project that has all the
9 potential and foreseeable negative impacts, many of which we have discussed here
10 and other witnesses throughout the course of this hearing have and will discuss. If
11 I decide to hire and employ someone to help me out in my farming or ranching
12 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
13 to my land or my town or my county or my state. And I’ve hired someone who is
14 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
15 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
16 jobs are not created equal. Additionally, I understand from what I’m familiar with
17 from TransCanada’s own statements that the jobs numbers they originally touted
18 were determined to be a minute fraction of the permanent jobs that had been
19 projected. According to their answer to our Interrogatory No. 191, TransCanada
20 has created only thirty-four (34) jobs within Nebraska working specifically on
21 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
22 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
23 Further, according to their answer to Interrogatory No. 199, TransCanada would
24 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
25 constructed on its Preferred Route or its Mainline Alternative Route.

26 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
27 **because it would cross your land?**

28 **A:** No, absolutely not. **I am opposed to this project because it is not in the public**
29 **interest, neither within my community nor within our state.**

1 **Q: Would you be happier if instead of crossing your land, this proposed pipeline**
2 **was to cross someone else's land?**

3 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
4 the fear and anxiety and potential foreseeable risks and negative impacts that this
5 type of a project carrying this type of product brings foisted upon anyone in this
6 state or any other state.

7 **Q: Do you think there is any intelligent route for the proposed Keystone XL**
8 **Pipeline to cross the state of Nebraska?**

9 A: I don't believe there is an intelligent route because as I have stated I don't believe
10 this project anywhere within Nebraska is within the public interest. However, if
11 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
12 had to go somewhere in the state of Nebraska, the only intelligent route I believe
13 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
14 preferred route and the mainline alternative routes are economic liabilities our
15 state cannot risk.

16 **Q: What do you rely upon to make that statement?**

17 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
18 already exists in that area is reason enough as it is not in our best interest or the
19 public interests to have more major oil pipelines crisscrossing our state. Second,
20 they have all the infrastructure already there in terms of relationships with the
21 counties and local officials and first responders along that route. Third, they have
22 already obtained easements from all the landowners along that route and have
23 relationships with them. Fourth, that route avoids our most sensitive soils, the
24 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
25 Aquifer. Sixth, they have already studied that route and previously offered it as an
26 alternative. Seventh, it just makes the most sense that as a state we would have
27 some intelligent policy of energy corridors and co-locating this type of
28 infrastructure near each other.

1 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
2 **like the Public Service Commissioners to consider in their review of**
3 **TransCanada's Application?**

4 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
5 document below but other things may come to me or my memory may be
6 refreshed and I will add and address those things at the time of the Hearing in
7 August and address any additional items at that time as is necessary. Additionally,
8 I have not had an adequate amount of time to receive and review all of
9 TransCanada's answers to our discovery and the discovery of others so it was
10 impossible to competently and completely react to that in my testimony here and I
11 reserve the right to also address anything related to discovery that has not yet
12 concluded as of the date I signed this document below. Lastly, certain documents
13 requested have not yet been produced by TransCanada and therefore I may have
14 additional thoughts on those I will also share at the hearing as needed.

15 **Q: What is it that you are requesting the Public Service Commissioners do in**
16 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
17 **across Nebraska?**

18 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
19 a temporary job spike that this project may bring to a few counties and beyond the
20 relatively small amount of taxes this proposed foreign pipeline would possibly
21 generate. And, instead think about the perpetual and forever impacts of this
22 pipeline as it would have on the landowners specifically, first and foremost, but
23 also thereby upon the entire state of Nebraska, and to determine that neither the
24 preferred route nor the Keystone mainline alternative route are in the public
25 interest of the citizens of the state of Nebraska. And if the Commissioners were
26 inclined to modify TransCanada's proposed routes and were to be inclined to grant
27 an application for a route in Nebraska, that the only potential route that would
28 make any intelligent sense whatsoever would be twinning or near paralleling of
29 the proposed KXL with the existing Keystone I pipeline. The point of including

1 Attachment No. 5 is to show that twinning Keystone I within Nebraska has been
2 considered by TransCanada before. It simply does not make sense to add yet
3 another major oil pipeline crisscrossing our state creating new pumping stations,
4 creating new impacts on additional counties and communities and going through
5 all of the court processes with myself and other landowners like me when this
6 applicant already has relationships with the landowners, the towns and the
7 communities along Keystone I, and that Keystone I is firmly outside of the sand
8 hills and a significantly further portion away from the heart of the Ogallala
9 Aquifer than the preferred route or the Keystone mainline alternative route.

10 **Q: Are all of your statements in your testimony provided above true and**
11 **accurate as of the date you signed this document to the best of your**
12 **knowledge?**

13 **A:** Yes, they are.

14 **Q: Thank you, I have no further questions at this time and reserve the right to**
15 **ask you additional questions at the August 2017 Hearing.**

R. Wynn Hipke
R. Wynn Hipke

Subscribed and Sworn to me before this 30th day of May, 2017.

Nathan Wabs
Notary Public



Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Jill Hipke in Support of Landowner
Intervenors**

State of Nebraska)
) ss.
Holt County)

1 **Q: Please state your name.**

2 A: My name is Jill Hipke

3 **Q: Are you an intervener in the Public Service Commission's proceedings**
4 **regarding TransCanada's application for approval of its proposed Keystone**
5 **XL tar sands pipeline across Nebraska?**

6 A: Yes, I am.

7 **Q: Do you own land in Nebraska, either directly or through an entity of which**
8 **you are an owner that could be affected by the proposed TransCanada**
9 **Keystone XL pipeline?**

10 A: Yes, I do and it is located in Holt County.

11 **Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial**
12 **photo(s) of your land in question here with the area of the proposed KXL**
13 **pipeline depicted?**

14 A: Yes.

15 **Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you**
16 **and or your family?**

EXHIBIT

28

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1 A: Yes.

2 **Q: Do you earn any income from this land?**

3 A: Yes.

4 **Q: Have you depended on the income from your land to support your livelihood**
5 **or the livelihood of your family?**

6 A: Yes.

7 **Q: Have you ever in the past or have you thought about in the future leasing all**
8 **or a portion of your land in question here?**

9 A: Yes, I have thought of it and that concerns me. I am concerned that a prospective
10 tenant may try to negotiate a lower price for my land if it had the pipeline on it and
11 all the restrictions and risks and potential negative impacts to farming or ranching
12 operations as opposed to land that did not have those same risks. If I was looking
13 to lease or rent ground I would pay more for comparable non-pipeline land than I
14 would for comparable pipeline land and I think most folks would think the same
15 way. This is another negative economic impact that affects the landowner and the
16 county and the state and will forever and ever should TransCanada's preferred or
17 mainline alternative routes be approved. If they were to twin or closely parallel to
18 Keystone I the vast majority of landowners would be those that already have a
19 pipeline so there would be considerable less new incremental negative impacts.

20 **Q: Do you have similar concerns about selling the land?**

21 A: Well I hope not to have to sell the land in my lifetime but times change and you
22 never know what is around the corner and yes I am concerned that if another piece
23 of ground similar to mine were for sale and it did not have the pipeline and mine
24 did that I would have a lower selling price. I think this would be true for pipeline
25 ground on both the preferred and mainline alternative routes.

26 **Q: What is your intent with your land after you die?**

27 A: Like I said I hope not to have to sell and I hope that it stays in the family for years
28 to come but I have thought about getting out if this pipeline were to come through.

1 **Q:** Are you aware that the preferred route of TransCanada's Keystone XL
2 Pipeline would cross the land described above and owned by you?

3 **A:** Yes.

4 **Q:** Were you or an entity for which you are a member, shareholder, or director
5 previously sued by TransCanada Keystone Pipeline, LP?

6 **A:** Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a
7 petition for condemnation against our land so it could place its proposed pipeline
8 within an easement that it wanted to take from us on our land.

9 **Q:** Did you defend yourself and your land in that condemnation action?

10 **A:** Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees
11 and expenses in our resistance of TransCanada's lawsuit against us.

12 **Q:** Has TransCanada reimbursed you for any of your expenses or costs for fees
13 incurred?

14 **A:** No, they have not.

15 **Q:** In its lawsuit against you, did TransCanada identify the amount of your
16 property that it wanted to take for its proposed pipeline?

17 **A:** The lawsuit against us stated they would take the amount of property that is
18 reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant
19 and equipment reasonably necessary to operate the pipeline.

20 **Q:** Did TransCanada define what they meant by "property that is reasonably
21 necessary"?

22 **A:** No, they did not.

23 **Q:** Did TransCanada in its lawsuit against you, identify the eminent domain
24 property portion of your land?

25 **A:** Yes, they did.

26 **Q:** Did TransCanada describe what rights it proposed to take related to the
27 eminent domain property on your land?

28 **A:** Yes, they did.

29 **Q:** What rights that they proposed to take did they describe?

1 A: TransCanada stated that the eminent domain property will be used to “lay, relay,
2 operate, and maintain the pipeline and the plant and equipment reasonably
3 necessary to operate the pipeline, specifically including surveying, laying,
4 constructing, inspecting, maintaining, operating, repairing, replacing, altering,
5 reconstructing, removing and abandoning one pipeline, together with all fittings,
6 cathodic protection equipment, pipeline markers, and all their equipment and
7 appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon,
8 petroleum products, and all by-products thereof.”

9 Q: Prior to filing an eminent domain lawsuit to take your land that
10 TransCanada identified, do you believe they attempted to negotiate in good
11 faith with you?

12 A: No, I do not.

13 Q: Did TransCanada at any time approach you with or deliver to you their
14 proposed easement and right-of-way agreement?

15 A: Yes, they did.

16 Q: At the time you reviewed TransCanada’s easement and right-of-way
17 agreement, did you understand that they would be purchasing a fee title
18 interest in your property or that they were taking something else?

19 A: I understood that they proposed to have the power to take both a temporary
20 construction easement that could last for a certain period of time and then also a
21 permanent easement which they described to be 50 feet across or in width, and
22 that would run the entire portion of my property from where a proposed pipeline
23 would enter my property until where it would exit the property.

24 Q: Is the document included with your testimony here as Attachment No. 3, a
25 true and accurate copy of TransCanada’s proposed Easement and Right-of-
26 Way agreement that they included with their condemnation lawsuit against
27 you?

28 A: Yes, it is.

1 **Q:** Have you had an opportunity to review TransCanada's proposed Easement
2 and Right-of-Way agreement?

3 **A:** Yes, I have.

4 **Q:** What is your understanding of the significance of the Easement and Right-of-
5 Way agreement as proposed by TransCanada?

6 **A:** My understanding is that this is the document that will govern all of the rights and
7 obligations and duties as well as the limitations of what I can and cannot do and
8 how I and any future landowner and any person I invite to come onto my property
9 must behave as well as what TransCanada is and is not responsible for and how
10 they can use my land.

11 **Q:** After reviewing TransCanada's proposed Easement and Right-of-Way
12 agreement do you have any concerns about any portions of it or any of the
13 language either included in the document or missing from the proposed
14 document?

15 **A:** Yes, I have a number of significant concerns and worries about the document and
16 how the language included and the language not included potentially negatively
17 impacts my land and thereby potentially negatively impacts my community and
18 my state.

19 **Q:** I would like you to walk the Commissioners through each and every one of
20 your concerns about TransCanada's proposed Easement and Right-of-Way
21 agreement so they can develop an understanding of how that language and
22 the terms of that contract, in your opinion, potentially negatively impacts you
23 and your land. So, if you can start at the beginning of that document and
24 let's work our way through it, okay?

25 **A:** Yes, I'll be happy to express my concerns about TransCanada's proposed
26 Easement and Right-of-Way agreement and how it negatively could affect my
27 property rights and my economic interests.

28 **Q:** Okay, let's start with your first concern please.

1 A: The very first sentence talks about consideration or how much money they will
2 pay to compensate me for all of the known and unknown affects and all of the
3 rights I am giving up and for all the things they get to do to my land and for what
4 they will prevent me from doing on my land and they only will pay me one time at
5 the signing of the easement agreement. That is a huge problem.

6 **Q: Explain to the Commissioners why that is a problem.**

7 A: It is not fair to the landowner, the county, or the State. It is not fair to the
8 landowner because they want to have my land forever for use as they see fit so
9 they can make a daily profit from their customers. If I was to lease ground from
10 my neighbor I would typically pay twice a year every year as long as they granted
11 me the rights to use their land. That only makes sense – that is fair. If I was going
12 to rent a house in town I would typically pay monthly, every month until I gave up
13 my right to use that house. By TransCanada getting out on the cheap and paying
14 once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax
15 revenue collection on the money I would be paid and then pay taxes on and
16 contribute to this state and this country. It is money I would be putting back into
17 my local community both spending and stimulating the local economy and
18 generating more economic activity right here. Instead TransCanada's shareholders
19 keep all that money and it never finds its way to Nebraska.

20 **Q: What is your next concern?**

21 A: The first paragraph goes on to say Grantor, which is me the landowner, "does
22 hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a
23 limited partnership..." and I have no idea who that really is. I have no idea who is
24 forcing this pipeline on us or who the owners of the entities are, or what are the
25 assets backing this limited partnership, or who the general partner is, or who all
26 the limited partners are, and who makes up the ownership of the these partners or
27 the structure or any of the basic things you would want to know and understand if
28 you would want to do business with such an outfit. According to TransCanada's
29 answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited

1 liability company called TransCanada Keystone Pipeline GP, LLC is the general
2 partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so
3 basically nothing. That is really scary since the general partner has the liability but
4 virtually none of the ownership and who knows if it has any other assets.

5 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
6 percent clear on exactly who could become the owner of over 275 miles of
7 Nebraska land?

8 **A:** No.

9 **Q:** Do you think it is in the public interest of Nebraska to not be one-hundred
10 percent clear on exactly who will be operating and responsible for
11 approximately 275 miles of tar sands pipeline underneath and through
12 Nebraska land?

13 **A:** No.

14 **Q:** Okay, let's continue please with your concerns of the impacts upon your land
15 and the State of Nebraska of TransCanada's easement terms.

16 **A:** Yes, so the next sentence talks about "...its successors and assigns (hereinafter
17 called "Grantee")..." and this concerns me because it would allow their easement
18 to be transferred or sold to someone or some company or country or who knows
19 what that I don't know and who we may not want to do business with. This
20 pipeline would be a huge asset for TransCanada and if they can sell to the highest
21 bidder that could have terrible impacts upon all of Nebraska depending upon who
22 may buy it and I don't know of any safeguards in place for us or the State to veto
23 or have any say so in who may own, operate, or be responsible for this pipeline in
24 the future.

25 **Q:** Do you think that type of uncertainty and lack of control over a major piece
26 of infrastructure crossing our State is in the public interest?

27 **A:** No, certainly not, in fact, just the opposite.

28 **Q:** What's next?

1 A: Then it says "...a perpetual permanent easement and right-of-way..." and this
2 really concerns me. Why does the easement and right-of-way have to be perpetual
3 and permanent? That is the question myself and my family want an answer to.
4 Perpetual to me is like forever and that doesn't make sense.

5 **Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?**

6 A: For many reasons but mostly because the tar sands are finite. I am unaware of any
7 data proving there is a perpetual supply of tar sands. I am not aware in
8 TransCanada's application where it proves there is a perpetual necessity for this
9 pipeline. My understanding of energy infrastructure like wind towers is they have
10 a decommission plan and actually take the towers down when they become
11 obsolete or no longer needed. Nothing manmade lasts forever. My land however
12 will, and I want my family or future Nebraska families to have that land as
13 undisturbed as possible and it is not in my interest or the public interest of
14 Nebraska to be forced to give up perpetual and permanent rights in the land for
15 this specific kind of pipeline project.

16 **Q: Okay, what is your next concern?**

17 A: The easement language includes all these things TransCanada can do and it says
18 "...abandoning in place..." so they can just leave this pipeline under my ground
19 until the end of time just sitting there while they are not using it, but I am still
20 prevented from doing on my land and using my land what I would like. If I owned
21 a gas station I couldn't just leave my underground oil or fuel storage tanks sitting
22 there. It doesn't make sense and it scares me and it is not in my interest or the
23 public interest of Nebraska to allow this.

24 **Q: Now it looks like we are ready to go to the second page of the Easement is that**
25 **right?**

26 A: Yes.

27 **Q: So now on the second page of the Easement what are your concerns?**

28 A: Here the Easement identifies a 24-month deadline to complete construction of the
29 pipeline but has caveats that are undefined and ambiguous. The 24-month period

1 starts to run from the moment “actual pipeline installation activities” begin on
2 Landowners property. It appears that TransCanada would define this phrase as
3 needed. It would be wise to explain what types of TransCanada action constitutes
4 “installation activity” For instance, would the placement and storage of an
5 excavator or other equipment on or near the Easement property be an activity or
6 would earth have to be moved before the activity requirement is triggered. This
7 vague phrase is likely to lead to future disputes and litigation that is not in the best
8 interest of the welfare of Nebraska and would not protect property interests. The
9 24-months can also be extended in the case of “force majeure.” My understanding
10 is that force majeure is often used to insulate a party to a contract when events
11 occur that are completely out of their control. In TransCanada’s easement this is
12 expanded to include “without limitation...availability of labor and materials.”
13 Extending this language to labor and materials is problematic because these are
14 two variables that TransCanada does have some or significant control over and to
15 allow extension of the 24-month period over events not truly out of the control of
16 TransCanada and without further provision for compensation for the Landowner is
17 not conducive to protection of property rights.

18 **Q: Okay, what is your next concern?**

19 **A:** Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of
20 TransCanada and Landowner. In 1.A., the first sentence discusses “commercially
21 reasonable costs and expenses” will pay for damages caused but then limits
22 TransCanada’s liability to certain circumstances. There is no definition of
23 “commercially reasonable” and no stated right that the Landowner would get to
24 determine the amounts of cost or expense that is “commercially reasonable.”
25 TransCanada excepts out from their liability any damages that are caused by
26 Landowner’s negligence or the negligence of anyone ever acting on the behalf of
27 Landowner. It is understandable that if the Landowner were to willfully and
28 intentionally cause damages to the pipeline that Landowner should be liable.
29 However, anything short of willful misconduct should be the liability of

TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to

1 them in the Easement. Again, TransCanada unilaterally can decide to the
2 detriment of the property rights of Landowner what TransCanada believes is
3 necessary or convenient for it. And there is no option for any additional
4 compensation to landowner for any right exercised by TransCanada that leads to
5 the removal of trees or plants or vegetation or buildings or structures or facilities
6 owned by Landowner of any kind. Such undefined and unilateral restrictions and
7 rights without having to compensate Landowner for such further destruction or
8 losses are not conducive to the protection of property rights or economic interest.

9 **Q: What is the next concern you have?**

10 A: The Easement also allows some rights for Landowner but restricts them at the
11 same time and again at the sole and unilateral decision making of TransCanada.
12 TransCanada will determine if the actions of Landowner might in anyway
13 endanger or obstruct or interfere with TransCanada's full use of the Easement or
14 any appurtenances thereon to the pipeline itself or to their access to the Easement
15 or within the Easement and TransCanada retains the right at any time, whether
16 during growing season or not, to travel "within and along Easement Area on foot
17 or in vehicle or machinery..." Further at TransCanada's sole discretion it will
18 retain the rights to prevent any landowner activity that it thinks may "unreasonably
19 impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such
20 undefined and unilateral restrictions are not conducive to the protection of
21 property rights or economic interest.

22 **Q: What is the next concern you have with the Easement language?**

23 A: The Easement allows TransCanada sole discretion to burn or chip or bury under
24 Landowner's land any debris of any kind without any input or power of
25 Landowner to demand an alternative method or location of debris disposal. Such
26 unilateral powers would negatively affect Landowners property are not conducive
27 to the protection of property rights or economic interest.

28 **Q: What is the next concern you have with the Easement language?**

1 A: Again, undefined terms leave a lot of room for confusion. What does the phrase
2 “where rock is encountered” mean and why does TransCanada solely get to
3 determine whether or not this phrase is triggered. This phrase could be used to
4 justify installing the pipeline 24 inches beneath the surface. The ability to use this
5 provision to minimal locate the pipeline at a depth of 24 inches could negatively
6 affect Landowners property are not conducive to the protection of property rights.
7 A shallow pipeline is much more likely to become a danger and liability in the
8 future given farming operations and buried irrigation lines and other factors
9 common to the current typical agricultural uses of the land in question impacted
10 by TransCanada’s preferred pipeline route.

11 **Q: What is the next concern you have with the Easement language?**

12 A: There are more vague concepts solely at the determination of TransCanada such as
13 “as nearly as practicable” and “pre-construction position” and “extent reasonably
14 possible.” There is nothing here that defines this or provides a mechanism for
15 documenting or memorializing “pre-construction position” so as to minimize
16 costly legal battles or wasted Landowner time attempting to recreate the soil
17 condition on their fields or pasture. Such unilateral powers would negatively affect
18 Landowners property are not conducive to the protection of property rights or
19 economic interest.

20 **Q: What is the next concern you have with the Easement language?**

21 A: TransCanada maintains the unilateral right to abandon the pipeline and all
22 appurtenances thereto in place on, under, across, or through Nebraska land at any
23 time it chooses. There is no provision for Landowner compensation for such
24 abandonment nor any right for the Landowner to demand removal. Such unilateral
25 powers would negatively affect Landowners property are not conducive to the
26 protection of property rights or economic interest.

27 **Q: What is the next concern you have with the Easement language?**

28 A: TransCanada has the power to unilaterally move or modify the location of any
29 Easement area whether permanent or temporary at their sole discretion.

1 Regardless, if Landowner has taken prior steps relative to their property in
2 preparation or planning of TransCanada's taking of the initial easement area(s),
3 the language here does not require TransCanada to compensate the Landowner if
4 they decide to move the easement anywhere on Landowners property. Such
5 unilateral powers would negatively affect Landowners property are not conducive
6 to the protection of property rights or economic interests.

7 **Q: What is the next concern you have with the Easement language?**

8 A: The Easement requires that all of the burdens and restrictions upon Landowner to
9 transfer and be applicable to any future owner of the Land in question without the
10 ability of the future Landowner to modify or negotiate any of the language in
11 question to which it will be held to comply.

12 **Q: What is the next concern you have with the Easement language?**

13 A: The Easement allows TransCanada to assign, transfer, or sell any part of the
14 Easement to any person, company, country, etc. at their sole discretion at anytime
15 to anyone. This also means that any buyer of the easement could do the same to a
16 third buyer and so on forever. There is no change of control or sale provision in
17 place to protect the Landowner or Nebraska or to provide compensation for such
18 change of control or ownership. It is not conducive to the protection of property
19 rights or economic interests to allow unilateral unrestricted sale of the Easement
20 thereby forcing upon the Landowner and our State a new unknown Easement
21 owner.

22 **Q: What is the next concern you have with the Easement language?**

23 A: There are many terms in the Easement that are either confusing or undefined terms
24 that are without context as to whether or not the Landowner would have any say
25 so in determining what these terms mean or if the evaluation is solely in
26 TransCanada's control. Some of these vague undefined and ambiguous terms are
27 as follows:

- 28 i. "pipeline installation activities"
- 29 ii. "availability of labor and materials"

- iii. “commercially reasonable costs and expenses”
- iv. “reasonably anticipated and foreseeable costs and expenses”
- v. “yield loss damages”
- vi. “diminution in the value of the property”
- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

1 **Q:** Do you have any other concerns about the Easement language that you can
2 think of at this time?

3 **A:** I reserve the right to discuss any additional concerns that I think of at the time of
4 my live testimony in August.

5 **Q:** Based upon what you have shared with the Commission above regarding
6 TransCanada's proposed Easement terms and agreement, do you believe
7 those to be reasonable or just, under the circumstances of the pipeline's
8 impact upon you and your land?

9 **A:** No, I do not believe those terms to be reasonable or just for the reasons that we
10 discussed previously.

11 **Q:** Did TransCanada ever offer you financial compensation for the rights that
12 they sought to obtain in your land, and for what they sought to prevent you
13 and any future land owner of your property from doing in the future?

14 **A:** Yes, we received an offer from them.

15 **Q:** As the owner of the land in question and as the person who knows it better
16 than anyone else, do you believe that TransCanada offered you just, or fair,
17 compensation for all of what they proposed to take from you so that their tar
18 sands pipeline could be located across your property?

19 **A:** No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just
20 offer for all the potential impacts and effects and the rights that I'm giving up, and
21 what we will be prevented from doing in the future and how their pipeline would
22 impact my property for ever and ever.

23 **Q:** Has TransCanada at any time offered to compensate you annually, such as
24 wind farm projects do, for the existence of their potential tar sands pipeline
25 across your property.

26 **A:** No, never.

27 **Q:** At any time did TransCanada present you with or request that you, as the
28 owner of the land in question, sign and execute a document called, "Advanced
29 Release of Damage Claims and Indemnity Agreement?"

1 A: Yes, they did and it was included in the County Court lawsuit against us.

2 Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the

3 “Advanced Release of Damage Claims and Indemnity Agreement?”

4 A: Yes, it is.

5 Q: What was your understanding of that document?

6 A: When I read that document in the plain language of that document, it was my

7 understanding that TransCanada was attempting to pay me a very small amount at

8 that time in order for me to agree to give up my rights to be compensated from

9 them in the future related to any damage or impact they may have upon my

10 property “arising out of, in connection with, or alleged to resulted from

11 construction or surveying over, under or on” my land.

12 Q: Did you ever sign that document?

13 A: No, I did not.

14 Q: Why not?

15 A; Because I do not believe that it is fair or just to try to get me to agree to a small

16 sum of money when I have no idea how bad the impacts or damages that they, or

17 their contractors, or subcontractors, or other agents or employees, may cause on

18 my land at any time in the future that resulted from the construction or surveying

19 or their activities upon my land.

20 Q: When you reviewed this document, what did it make you feel?

21 A: I felt like it was simply another attempt for TransCanada to try to pay very little to

22 shield themselves against known and foreseeable impacts that their pipeline, and

23 the construction of it, would have upon my land. It made me feel that they knew it

24 was in their financial interest to pay me as little as possible to prevent me from

25 ever having the opportunity to seek fair compensation again, and that this must be

26 based upon their experience of unhappy landowners and situations in other places

27 where they have built pipelines.

1 Q: Has TransCanada ever contacted you and specifically asked you if you
2 thought their proposed location of their proposed pipeline across your land
3 was in your best interest?

4 A: No, they have not.

5 Q: Has TransCanada ever contacted you and specifically asked you if you
6 thought their proposed location of their proposed pipeline across your land
7 was in the public interest of the State of Nebraska?

8 A: No, they have not.

9 Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the
10 Takings Clause?

11 A: Yes, I am.

12 Q: What is your understanding of the Fifth Amendment as it relates to taking of
13 an American citizens property?

14 A: My understanding is that, according to the United States Constitution, that if the
15 government is going to take land for public use, then in that case, or by taking for
16 public use, it can only occur if the private land owner is compensated justly, or
17 fairly.

18 Q: Has TransCanada ever contacted you specially to explain the way in which
19 the public could use its proposed Keystone XL Pipeline?

20 A: No, they have not.

21 Q: Can you think of any way in which the public, that is the citizens of the State
22 of Nebraska, can directly use the proposed TransCanada Keystone XL
23 Pipeline, as it dissects the State of Nebraska?

24 A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the
25 public benefits from this pipeline in any way, how they can use it any way, or how
26 it's in the public interest in any way. By looking at the map, it is quite clear to me
27 that the only reason it's proposed to come through Nebraska, is that because we
28 are geographically in the way from between where the privately-owned Tar Sands

1 are located to where TransCanada wants to ship the Tar Sands to refineries in
2 Houston, Texas.

3 **Q:** **Has TransCanada ever contacted you and asked you if you had any tar sands,**
4 **crude petroleum, or oil and petroleum by-products that you would like to**
5 **ship in its pipeline?**

6 **A:** No, it has not.

7 **Q:** **Do you have any tar sands, crude petroleum, or oil and petroleum by-**
8 **products that you, at this time or any time in the future, would desire to place**
9 **for transport within the proposed TransCanada Keystone XL Pipeline?**

10 **A:** No, I do not.

11 **Q:** **Do you know anyone in the state of Nebraska who would be able to ship any**
12 **Nebraska-based tar sands, crude petroleum, or oil and petroleum by-**
13 **products within the proposed TransCanada Keystone XL Pipeline?**

14 **A:** No, I do not. I've never heard of such a person or company like that.

15 **Q:** **Do you pay property taxes for the land that would be affected and impacted**
16 **at the proposed TransCanada Keystone XL Pipeline?**

17 **A:** Yes, I do.

18 **Q:** **Why do you pay property taxes on that land?**

19 **A:** Because that is the law. The law requires us to pay the property taxes as the owner
20 of that property.

21 **Q:** **Because you follow the law and pay property taxes, do you believe you**
22 **deserve any special consideration or treatment apart from any other person**
23 **or company that pays property taxes?**

24 **A:** Well no, of course not. It's the law to pay property taxes if you own property. It's
25 just what you do.

26 **Q:** **Do you believe the fact that you pay property taxes entitles you to special**
27 **treatment of any kind, or special rights of any kind?**

28 **A:** No, of course not.

Q: Do you believe the fact that you pay property taxes on your land would be enough to qualify you to have the power of eminent domain to take land of your neighbors or other people in your county, or other people across the state of Nebraska?

A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that I expect an award for or any type of special consideration.

Q: Have you at any time ever employed any person other than yourself?

A: Well, yes I have.

Q: Do you believe that the fact that you have, at some point in your life, employed one or more other persons entitle you to any special treatment or consideration above and beyond any other Nebraskan that has also employed one or more persons?

A: No, of course not.

Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer have at one point employed another person within this state, entitles you to preferential treatment or consideration of any kind?

A: No, of course not. If I choose to employ someone that decision is up to me. I don't deserve any special treatment or consideration for that fact.

Q: Do you have any concerns TransCanada's fitness as an applicant for a major crude oil pipeline in its preferred location, or ultimate location across the state of Nebraska?

A: Yes, I have significant concerns. I am aware of landowners being treated unfairly or even bullied around and being made to feel scared that they did not have any options but to sign whatever papers TransCanada told them they had to. I am aware of folks being threatened that their land would be taken if they didn't follow what TransCanada was saying. I am aware of tactics to get people to sign easements that I don't believe have any place in Nebraska or anywhere such as TransCanada or some outfit associated with it hiring a pastor or priest to pray with landowners and convince them they should sign TransCanada's easement

1 agreements. I am aware of older folks and widows or widowers feeling they had
2 no choice but to sign TransCanada's Easement and they didn't know they could
3 fight or stand up for themselves. From a more practical standpoint, I am worried
4 that according to their answer to our Interrogatory No. 211, TransCanada only
5 owns and operates one (1) major oil pipeline. They simply do not have the
6 experience with this type of pipeline and that scares me. There are others but that
7 is what I can recollect at this time and if I remember more or my recollection is
8 refreshed I will share those with the Commissioners at the Hearing in August.

9 **Q: Do you believe TransCanada's proposed method of compensation to you as a**
10 **landowner is reasonable or just?**

11 **A:** No, I do not.

12 **Q: Do you have any concern about limitations that the construction of this**
13 **proposed pipeline across your affected land would prevent construction of**
14 **future structures upon the portion of your land affected by the proposed**
15 **easement and immediately surrounding areas?**

16 **A:** Well yes, of course I do. We would not be able to build many, if any, types of
17 structures directly across or touching the easement, and it would be unwise and I
18 would be uncomfortable to build anything near the easement for fear of being
19 blamed in the future should any damage or difficulty result on my property in
20 regards to the pipeline.

21 **Q: Do you think such a restriction would impact you economically?**

22 **A:** Well yes, of course.

23 **Q: How do you think such a restriction would impact you economically?**

24 **A:** The future of this land may not be exactly how it's being used as of this moment,
25 and having the restrictions and limiting my ability to develop my land in certain
26 ways presents a huge negative economic impact on myself, my family, and any
27 potential future owner of the property. You have no idea how I or the future owner
28 may want to use this land in the future or the other land across Nebraska
29 potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years

1 ago it would have been hard to imagine all the advances that we have now or how
2 things change. Because the Easement is forever and TransCanada gets the rights in
3 my land forever we have to think with a very long term view. By placing their
4 pipeline on under across and through my land that prevents future development
5 which greatly negatively impacts future taxes and tax revenue that could have
6 been generated by the County and State but now will not. When you look at the
7 short blip of economic activity that the two years of temporary construction efforts
8 may bring, that is far outweighed by the perpetual and forever loss of opportunity
9 and restrictions TransCanada is forcing upon us and Nebraska. The terms of the
10 easement must be addressed in order for the Commission to truly consider
11 property rights, economic interests, the welfare of Nebraska, and the balancing of
12 the proposed routes against all they will affect and impact.

13 **Q: Do you have any concerns about the environmental impact of the proposed**
14 **pipeline?**

15 A: Yes, I do.

16 **Q: What are some of those concerns?**

17 A: As an affected land owner and Nebraskan, I am concerned that any construction,
18 operation, and/or maintenance of the proposed Keystone XL Pipeline would have
19 a detrimental impact upon the environment of my land specifically, as well as the
20 lands near my land and surrounding the proposed pipeline route.

21 **Q: Do you have any other environmental concerns?**

22 A: Yes, of course I am concerned about potential breaches of the pipeline, failures in
23 construction and/or maintenance and operation. I am concerned about spills and
24 leaks that TransCanada has had in the past and will have in the future. This could
25 be catastrophic to my operations or others and to my county and the State.

26 **Q: Do you have any thoughts regarding if there would be an impact upon the**
27 **natural resources on or near your property due to the proposed pipeline?**

28 A: Yes, I believe that any construction, operation, and/or maintenance of the
29 proposed Keystone XL Pipeline would have detrimental impacts upon the natural

resources of my land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of your land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over your land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the groundwater of not only under my land, but also near and surrounding the pipeline route, and in fact, potentially the entire State of Nebraska. Water is life plain and simple and it is simply too valuable to our State and the country to put at unreasonable risk.

Q: Do you have any concern about the potential impact of the proposed pipeline upon the surface water on, or near or around your land?

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along

1 and near and surrounding the pipeline route, and in fact, across the state of
2 Nebraska.

3 **Q: Do you have any concern about the potential impacts of the proposed pipeline**
4 **upon the wildlife and plants, other than your growing crops on or near your**
5 **land?**

6 A: Yes, I'm very concerned that any construction, operation, and/or maintenance of
7 the proposed Keystone XL Pipeline would have a detrimental impact upon the
8 wildlife and the plants, not only that are located on or can be found upon my land,
9 but also near and along the proposed pipeline route.

10 **Q: Do you have any concerns about the effects of the proposed pipeline upon the**
11 **fair market value of your land?**

12 A: Yes, I do. I am significantly concerned about how the existence of the proposed
13 pipeline underneath and across and through my property will negatively affect the
14 fair market value at any point in the future, especially at that point in which I
15 would need to sell the property, or someone in my family would need to sell the
16 property. I do not believe, and certainly would not be willing to pay, the same
17 price for land that had the pipeline located on it, versus land that did not. I hope
18 there is never a point where I'm in a position where I have to sell and have to
19 realize as much value as I can out of my land. But because it is my single largest
20 asset, I'm gravely concerned that the existence of the proposed Keystone XL
21 Pipeline upon my land will affect a buyer's willingness to pay as much as they
22 would've paid and as much as I could've received, if the pipeline were not upon
23 my property. There are just too many risks, unknowns, impacts and uncertainties,
24 not to mention all of the rights you give up by the nature of having the pipeline
25 due to having the easement that we have previously discussed, for any reasonable
26 person to think that the existence of the pipeline would not negatively affect my
27 property's value.

28 **Q: Have you ever seen the document that's marked as Attachment No. 6, to your**
29 **testimony?**

1 A: Yes, I have.

2 **Q: Where have you seen that before?**

3 A: That is a map I think I first saw a couple years ago that shows the Keystone XL
4 I-90 corridor alternate route of its proposed pipeline through Nebraska and I
5 believe the portion of the alternative route in Nebraska essentially twins or
6 parallels Keystone I.

7 **Q: Do you believe the portion of the proposed pipeline route within Nebraska as**
8 **found in Attachment No. 6 to your testimony, is in the public interest of**
9 **Nebraska?**

10 A: No, I do not.

11 **Q: Do you believe that TransCanada's preferred route as found on page 5 of its**
12 **Application, and as found on Attachment No. 7, here to your testimony, is in**
13 **the public interest of Nebraska?**

14 A: No, I do not.

15 **Q: Do you believe that the Keystone mainline alternative route as shown on**
16 **Attachment No. 7 included with your testimony here is a major oil pipeline**
17 **route that is in the public interest of Nebraska?**

18 A: No, I do not.

19 **Q: Do you believe there is any potential route for the proposed Keystone XL**
20 **Pipeline across, within, under, or through the State of Nebraska that is in the**
21 **public interest of the citizens of Nebraska?**

22 A: No, I do not.

23 **Q: Why do you hold that belief?**

24 A: Because there simply is no public interest based on all of the factors that I am
25 aware and that I have read and that I have studied that this Commission is to
26 consider that would establish that a for-profit foreign-owned pipeline that simply
27 crosses Nebraska because we are geographically in the way between where tar
28 sands are in Canada to where it wants to ship it to in Texas could ever be in the
29 public interest of Nebraskans. We derive no benefit from this project. It is not for

1 public use. Nebraska is simply in the way and when all considerations are taken in
2 there is no net benefit of any kind for Nebraska should this project be placed in our
3 state. Even if there was some arguable “benefit” it is not enough to outweigh all
4 the negative impacts and concerns.

5 **Q: What do you think about the applicant, TransCanada’s argument that it’s**
6 **preferred route for its proposed Keystone XL Pipeline is in the public interest**
7 **of Nebraska because it may bring temporary jobs during the construction**
8 **phase to Nebraska?**

9 **A:** First of all, not all jobs are created equally. Most jobs that are created, whether
10 temporary or on a permanent basis, don’t come with a project that has all the
11 potential and foreseeable negative impacts, many of which we have discussed here
12 and other witnesses throughout the course of this hearing have and will discuss. If
13 I decide to hire and employ someone to help me out in my farming or ranching
14 business, I’ve created a job but I haven’t done so at the risk or detrimental impact
15 to my land or my town or my county or my state. And I’ve hired someone who is
16 working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce
17 and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all
18 jobs are not created equal. Additionally, I understand from what I’m familiar with
19 from TransCanada’s own statements that the jobs numbers they originally touted
20 were determined to be a minute fraction of the permanent jobs that had been
21 projected. According to their answer to our Interrogatory No. 191, TransCanada
22 has created only thirty-four (34) jobs within Nebraska working specifically on
23 behalf of TransCanada and according to their answer to Interrogatory No. 196, as
24 of May 5, 2017 they only employ one (1) temporary working within Nebraska.
25 Further, according to their answer to Interrogatory No. 199, TransCanada would
26 only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was
27 constructed on its Preferred Route or its Mainline Alternative Route.

28 **Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply**
29 **because it would cross your land?**

1 A: No, absolutely not. I am opposed to this project because it is not in the public
2 interest, neither within my community nor within our state.

3 Q: Would you be happier if instead of crossing your land, this proposed pipeline
4 was to cross someone else's land?

5 A: No, absolutely not. I would get no joy in having a fellow citizen of my state have
6 the fear and anxiety and potential foreseeable risks and negative impacts that this
7 type of a project carrying this type of product brings foisted upon anyone in this
8 state or any other state.

9 Q: Do you think there is any intelligent route for the proposed Keystone XL
10 Pipeline to cross the state of Nebraska?

11 A: I don't believe there is an intelligent route because as I have stated I don't believe
12 this project anywhere within Nebraska is within the public interest. However, if
13 you are presenting a hypothetical that if this proposed KXL Pipeline absolutely
14 had to go somewhere in the state of Nebraska, the only intelligent route I believe
15 would be to twin or closely parallel the existing Keystone I Pipeline. Both the
16 preferred route and the mainline alternative routes are economic liabilities our
17 state cannot risk.

18 Q: What do you rely upon to make that statement?

19 A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I,
20 already exists in that area is reason enough as it is not in our best interest or the
21 public interests to have more major oil pipelines crisscrossing our state. Second,
22 they have all the infrastructure already there in terms of relationships with the
23 counties and local officials and first responders along that route. Third, they have
24 already obtained easements from all the landowners along that route and have
25 relationships with them. Fourth, that route avoids our most sensitive soils, the
26 sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala
27 Aquifer. Sixth, they have already studied that route and previously offered it as an
28 alternative. Seventh, it just makes the most sense that as a state we would have

1 some intelligent policy of energy corridors and co-locating this type of
2 infrastructure near each other.

3 **Q: Have you fully expressed each and every opinion, concern, or fact you would**
4 **like the Public Service Commissioners to consider in their review of**
5 **TransCanada's Application?**

6 **A:** No, I have not. I have shared that which I can think of as of the date I signed this
7 document below but other things may come to me or my memory may be
8 refreshed and I will add and address those things at the time of the Hearing in
9 August and address any additional items at that time as is necessary. Additionally,
10 I have not had an adequate amount of time to receive and review all of
11 TransCanada's answers to our discovery and the discovery of others so it was
12 impossible to competently and completely react to that in my testimony here and I
13 reserve the right to also address anything related to discovery that has not yet
14 concluded as of the date I signed this document below. Lastly, certain documents
15 requested have not yet been produced by TransCanada and therefore I may have
16 additional thoughts on those I will also share at the hearing as needed.

17 **Q: What is it that you are requesting the Public Service Commissioners do in**
18 **regards to TransCanada's application for the proposed Keystone XL Pipeline**
19 **across Nebraska?**

20 **A:** I am respectfully and humbly requesting that the Commissioners think far beyond
21 a temporary job spike that this project may bring to a few counties and beyond the
22 relatively small amount of taxes this proposed foreign pipeline would possibly
23 generate. And, instead think about the perpetual and forever impacts of this
24 pipeline as it would have on the landowners specifically, first and foremost, but
25 also thereby upon the entire state of Nebraska, and to determine that neither the
26 preferred route nor the Keystone mainline alternative route are in the public
27 interest of the citizens of the state of Nebraska. And if the Commissioners were
28 inclined to modify TransCanada's proposed routes and were to be inclined to grant
29 an application for a route in Nebraska, that the only potential route that would

1 make any intelligent sense whatsoever would be twinning or near paralleling of
2 the proposed KXL with the existing Keystone I pipeline. The point of including
3 Attachment No. 6 is to show that twinning Keystone I within Nebraska has been
4 considered by TransCanada before. It simply does not make sense to add yet
5 another major oil pipeline crisscrossing our state creating new pumping stations,
6 creating new impacts on additional counties and communities and going through
7 all of the court processes with myself and other landowners like me when this
8 applicant already has relationships with the landowners, the towns and the
9 communities along Keystone I, and that Keystone I is firmly outside of the sand
10 hills and a significantly further portion away from the heart of the Ogallala
11 Aquifer than the preferred route or the Keystone mainline alternative route.

12 **Q: Are all of your statements in your testimony provided above true and**
13 **accurate as of the date you signed this document to the best of your**
14 **knowledge?**

15 **A:** Yes, they are.

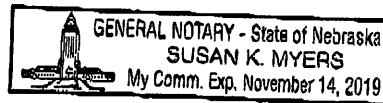
16 **Q: Thank you, I have no further questions at this time and reserve the right to**
17 **ask you additional questions at the August 2017 Hearing.**

Jill Hipke

Jill R. Hipke

Subscribed and Sworn to me before this 30th day of May, 2017.

Notary Public



Susan K Myers

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Richard M. Kilmurry in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Holt County)

Q: Please state your name.

A: My name is Richard M. Kilmurry

Q: Are you an intervener in the Public Service Commission's proceedings regarding TransCanada's application for approval of its proposed Keystone XL tar sands pipeline across Nebraska?

A: Yes, I am.

Q: Do you own land in Nebraska, either directly or through an entity of which you are an owner that could be affected by the proposed TransCanada Keystone XL pipeline?

A: Yes, I do and it is located in Holt County.

Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial photo(s) of your land in question here with the area of the proposed KXL pipeline depicted?

A: Yes.

Q: What do you do for a living?

EXHIBIT

29

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A: Rancher.

Q: If you are you married tell us your spouse's name please?

A: Bonny Kilmurry.

Q: If you have children how many do you have?

A: Yes, we have 4 children. Mike, Michelle, Sarah and Matt.

Q: If you have grandchildren how many do you have?

A: We have 3 grandchildren and 2 step grandchildren.

Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you and or your family?

A: Yes.

Q: For the land that would be affected and impacted by the proposed KXL tar sands pipeline give the Commissioners a sense how long the land has been in your family and a little history of the land.

A: Nearly 100 years.

Q: Do you earn any income from this land?

A: Yes.

Q: Have you depended on the income from your land to support your livelihood or the livelihood of your family?

A: Yes.

Q: Have you ever in the past or have you thought about in the future leasing all or a portion of your land in question here?

A: Yes, I have thought of it and that concerns me. I am concerned that a prospective tenant may try to negotiate a lower price for my land if it had the pipeline on it and all the restrictions and risks and potential negative impacts to farming or ranching operations as opposed to land that did not have those same risks. If I was looking to lease or rent ground I would pay more for comparable non-pipeline land than I would for comparable pipeline land and I think most folks would think the same way. This is another negative economic impact that affects the landowner and the county and the state and will forever and ever should TransCanada's preferred or

mainline alternative routes be approved. If they were to twin or closely parallel to Keystone I the vast majority of landowners would be those that already have a pipeline so there would be considerable less new incremental negative impacts.

Q: Do you have similar concerns about selling the land?

A: Well I hope not to have to sell the land in my lifetime but times change and you never know what is around the corner and yes I am concerned that if another piece of ground similar to mine were for sale and it did not have the pipeline and mine did that I would have a lower selling price. I think this would be true for pipeline ground on both the preferred and mainline alternative routes.

Q: What is your intent with your land after you die?

A: Like I said I hope not to have to sell and I hope that it stays in the family for years to come but I have thought about getting out if this pipeline were to come through.

Q: Are you aware that the preferred route of TransCanada's Keystone XL Pipeline would cross the land described above and owned by you?

A: Yes.

Q: Were you or an entity for which you are a member, shareholder, or director previously sued by TransCanada Keystone Pipeline, LP?

A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a petition for condemnation against our land so it could place its proposed pipeline within an easement that it wanted to take from us on our land.

Q: Did you defend yourself and your land in that condemnation action?

A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees and expenses in our resistance of TransCanada's lawsuit against us.

Q: Has TransCanada reimbursed you for any of your expenses or costs for fees incurred?

A: No, they have not.

Q: In its lawsuit against you, did TransCanada identify the amount of your property that it wanted to take for its proposed pipeline?

A: The lawsuit against us stated they would take the amount of property that is reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant and equipment reasonably necessary to operate the pipeline.

Q: Did TransCanada define what they meant by “property that is reasonably necessary”?

A: No, they did not.

Q: Did TransCanada in its lawsuit against you, identify the eminent domain property portion of your land?

A: Yes, they did.

Q: Did TransCanada describe what rights it proposed to take related to the eminent domain property on your land?

A: Yes, they did.

Q: What rights that they proposed to take did they describe?

A: TransCanada stated that the eminent domain property will be used to “lay, relay, operate, and maintain the pipeline and the plant and equipment reasonably necessary to operate the pipeline, specifically including surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning one pipeline, together with all fittings, cathodic protection equipment, pipeline markers, and all their equipment and appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon, petroleum products, and all by-products thereof.”

Q: Prior to filing an eminent domain lawsuit to take your land that TransCanada identified, do you believe they attempted to negotiate in good faith with you?

A: No, I do not.

Q: Did TransCanada at any time approach you with or deliver to you their proposed easement and right-of-way agreement?

A: Yes, they did.

Q: At the time you reviewed TransCanada's easement and right-of-way agreement, did you understand that they would be purchasing a fee title interest in your property or that they were taking something else?

A: I understood that they proposed to have the power to take both a temporary construction easement that could last for a certain period of time and then also a permanent easement which they described to be 50 feet across or in width, and that would run the entire portion of my property from where a proposed pipeline would enter my property until where it would exit the property.

Q: Is the document included with your testimony here as Attachment No. 3, a true and accurate copy of TransCanada's proposed Easement and Right-of-Way agreement that they included with their condemnation lawsuit against you?

A: Yes, it is.

Q: Have you had an opportunity to review TransCanada's proposed Easement and Right-of-Way agreement?

A: Yes, I have.

Q: What is your understanding of the significance of the Easement and Right-of-Way agreement as proposed by TransCanada?

A: My understanding is that this is the document that will govern all of the rights and obligations and duties as well as the limitations of what I can and cannot do and how I and any future landowner and any person I invite to come onto my property must behave as well as what TransCanada is and is not responsible for and how they can use my land.

Q: After reviewing TransCanada's proposed Easement and Right-of-Way agreement do you have any concerns about any portions of it or any of the language either included in the document or missing from the proposed document?

A: Yes, I have a number of significant concerns and worries about the document and how the language included and the language not included potentially negatively

impacts my land and thereby potentially negatively impacts my community and my state.

Q: I would like you to walk the Commissioners through each and every one of your concerns about TransCanada's proposed Easement and Right-of-Way agreement so they can develop an understanding of how that language and the terms of that contract, in your opinion, potentially negatively impacts you and your land. So, if you can start at the beginning of that document and let's work our way through it, okay?

A: Yes, I'll be happy to express my concerns about TransCanada's proposed Easement and Right-of-Way agreement and how it negatively could affect my property rights and my economic interests.

Q: Okay, let's start with your first concern please.

A: The very first sentence talks about consideration or how much money they will pay to compensate me for all of the known and unknown affects and all of the rights I am giving up and for all the things they get to do to my land and for what they will prevent me from doing on my land and they only will pay me one time at the signing of the easement agreement. That is a huge problem.

Q: Explain to the Commissioners why that is a problem.

A: It is not fair to the landowner, the county, or the State. It is not fair to the landowner because they want to have my land forever for use as they see fit so they can make a daily profit from their customers. If I was to lease ground from my neighbor I would typically pay twice a year every year as long as they granted me the rights to use their land. That only makes sense – that is fair. If I was going to rent a house in town I would typically pay monthly, every month until I gave up my right to use that house. By TransCanada getting out on the cheap and paying once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax revenue collection on the money I would be paid and then pay taxes on and contribute to this state and this country. It is money I would be putting back into my local community both spending and stimulating the local economy and

generating more economic activity right here. Instead TransCanada's shareholders keep all that money and it never finds its way to Nebraska.

Q: What is your next concern?

A: The first paragraph goes on to say Grantor, which is me the landowner, "does hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited partnership..." and I have no idea who that really is. I have no idea who is forcing this pipeline on us or who the owners of the entities are, or what are the assets backing this limited partnership, or who the general partner is, or who all the limited partners are, and who makes up the ownership of the these partners or the structure or any of the basic things you would want to know and understand if you would want to do business with such an outfit. According to TransCanada's answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow my easement to

be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

A: Then it says "...a perpetual permanent easement and right-of-way..." and this really concerns me. Why does the easement and right-of-way have to be perpetual and permanent? That is the question myself and my family want an answer to. Perpetual to me is like forever and that doesn't make sense.

Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?

A: For many reasons but mostly because the tar sands are finite. I am unaware of any data proving there is a perpetual supply of tar sands. I am not aware in TransCanada's application where it proves there is a perpetual necessity for this pipeline. My understanding of energy infrastructure like wind towers is they have a decommission plan and actually take the towers down when they become obsolete or no longer needed. Nothing manmade lasts forever. My land however will, and I want my family or future Nebraska families to have that land as undisturbed as possible and it is not in my interest or the public interest of Nebraska to be forced to give up perpetual and permanent rights in the land for this specific kind of pipeline project.

Q: Okay, what is your next concern?

A: The easement language includes all these things TransCanada can do and it says "...abandoning in place..." so they can just leave this pipeline under my ground

until the end of time just sitting there while they are not using it, but I am still prevented from doing on my land and using my land what I would like. If I owned a gas station I couldn't just leave my underground oil or fuel storage tanks sitting there. It doesn't make sense and it scares me and it is not in my interest or the public interest of Nebraska to allow this.

Q: Now it looks like we are ready to go to the second page of the Easement is that right?

A: Yes.

Q: So now on the second page of the Easement what are your concerns?

A: Here the Easement identifies a 24-month deadline to complete construction of the pipeline but has caveats that are undefined and ambiguous. The 24-month period starts to run from the moment "actual pipeline installation activities" begin on Landowners property. It appears that TransCanada would define this phrase as needed. It would be wise to explain what types of TransCanada action constitutes "installation activity" For instance, would the placement and storage of an excavator or other equipment on or near the Easement property be an activity or would earth have to be moved before the activity requirement is triggered. This vague phrase is likely to lead to future disputes and litigation that is not in the best interest of the welfare of Nebraska and would not protect property interests. The 24-months can also be extended in the case of "force majeure." My understanding is that force majeure is often used to insulate a party to a contract when events occur that are completely out of their control. In TransCanada's easement this is expanded to include "without limitation...availability of labor and materials." Extending this language to labor and materials is problematic because these are two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don’t think this unilateral power which I can’t do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: **Is there any specific event or example you are aware of that makes this concern more real for you?**

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: **What is your next concern with the Easement language?**

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: **What is the next concern you have?**

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably

impair[ed] or interfere[ed] with” TransCanada’s use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner’s land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase “where rock is encountered” mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada’s preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as “as nearly as practicable” and “pre-construction position” and “extent reasonably possible.” There is nothing here that defines this or provides a mechanism for documenting or memorializing “pre-construction position” so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement

thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined ambiguous terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"
- vii. "substantially same condition"
- viii. "an actual or potential hazard"
- ix. "efficient"
- x. "convenient"
- xi. "endangered"
- xii. "obstructed"
- xiii. "injured"
- xiv. "interfered with"
- xv. "impaired"
- xvi. "suitable crossings"
- xvii. "where rock is encountered"
- xviii. "as nearly as practicable"
- xix. "pre-construction position"
- xx. "pre-construction grade"
- xxi. "various engineering factors"

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada’s proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline’s impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: Did TransCanada ever offer you financial compensation for the rights that they sought to obtain in your land, and for what they sought to prevent you and any future land owner of your property from doing in the future?

A: Yes, we received an offer from them.

Q: As the owner of the land in question and as the person who knows it better than anyone else, do you believe that TransCanada offered you just, or fair, compensation for all of what they proposed to take from you so that their tar sands pipeline could be located across your property?

A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just offer for all the potential impacts and effects and the rights that I'm giving up, and what we will be prevented from doing in the future and how their pipeline would impact my property for ever and ever.

Q: **Has TransCanada at any time offered to compensate you annually, such as wind farm projects do, for the existence of their potential tar sands pipeline across your property.**

A: No, never.

Q: **At any time did TransCanada present you with or request that you, as the owner of the land in question, sign and execute a document called, "Advanced Release of Damage Claims and Indemnity Agreement?"**

A: Yes, they did and it was included in the County Court lawsuit against us.

Q: **Is Attachment No. 5, to your testimony here, a true and accurate copy of the "Advanced Release of Damage Claims and Indemnity Agreement?"**

A: Yes, it is.

Q: **What was your understanding of that document?**

A: When I read that document in the plain language of that document, it was my understanding that TransCanada was attempting to pay me a very small amount at that time in order for me to agree to give up my rights to be compensated from them in the future related to any damage or impact they may have upon my property "arising out of, in connection with, or alleged to resulted from construction or surveying over, under or on" my land.

Q: **Did you ever sign that document?**

A: No, I did not.

Q: **Why not?**

A: Because I do not believe that it is fair or just to try to get me to agree to a small sum of money when I have no idea how bad the impacts or damages that they, or their contractors, or subcontractors, or other agents or employees, may cause on

my land at any time in the future that resulted from the construction or surveying or their activities upon my land.

Q: When you reviewed this document, what did it make you feel?

A: I felt like it was simply another attempt for TransCanada to try to pay very little to shield themselves against known and foreseeable impacts that their pipeline, and the construction of it, would have upon my land. It made me feel that they knew it was in their financial interest to pay me as little as possible to prevent me from ever having the opportunity to seek fair compensation again, and that this must be based upon their experience of unhappy landowners and situations in other places where they have built pipelines.

Q: Has TransCanada ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in your best interest?

A: No, they have not.

Q: Has TransCanada ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in the public interest of the State of Nebraska?

A: No, they have not.

Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the Takings Clause?

A: Yes, I am.

Q: What is your understanding of the Fifth Amendment as it relates to taking of an American citizens property?

A: My understanding is that, according to the United States Constitution, that if the government is going to take land for public use, then in that case, or by taking for public use, it can only occur if the private land owner is compensated justly, or fairly.

Q: Has TransCanada ever contacted you specially to explain the way in which the public could use its proposed Keystone XL Pipeline?

A: No, they have not.

Q: Can you think of any way in which the public, that is the citizens of the State of Nebraska, can directly use the proposed TransCanada Keystone XL Pipeline, as it dissects the State of Nebraska?

A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the public benefits from this pipeline in any way, how they can use it any way, or how it's in the public interest in any way. By looking at the map, it is quite clear to me that the only reason it's proposed to come through Nebraska, is that because we are geographically in the way from between where the privately-owned Tar Sands are located to where TransCanada wants to ship the Tar Sands to refineries in Houston, Texas.

Q: Has TransCanada ever contacted you and asked you if you had any tar sands, crude petroleum, or oil and petroleum by-products that you would like to ship in its pipeline?

A: No, it has not.

Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-products that you, at this time or any time in the future, would desire to place for transport within the proposed TransCanada Keystone XL Pipeline?

A: No, I do not.

Q: Do you know anyone in the state of Nebraska who would be able to ship any Nebraska-based tar sands, crude petroleum, or oil and petroleum by-products within the proposed TransCanada Keystone XL Pipeline?

A: No, I do not. I've never heard of such a person or company like that.

Q: Do you pay property taxes for the land that would be affected and impacted at the proposed TransCanada Keystone XL Pipeline?

A: Yes, I do.

Q: Why do you pay property taxes on that land?

A: Because that is the law. The law requires us to pay the property taxes as the owner of that property.

Q: Because you follow the law and pay property taxes, do you believe you deserve any special consideration or treatment apart from any other person or company that pays property taxes?

A: Well no, of course not. It's the law to pay property taxes if you own property. It's just what you do.

Q: Do you believe the fact that you pay property taxes entitles you to special treatment of any kind, or special rights of any kind?

A: No, of course not.

Q: Do you believe the fact that you pay property taxes on your land would be enough to qualify you to have the power of eminent domain to take land of your neighbors or other people in your county, or other people across the state of Nebraska?

A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that I expect an award for or any type of special consideration.

Q: Have you at any time ever employed any person other than yourself?

A: Well, yes I have.

Q: Do you believe that the fact that you have, at some point in your life, employed one or more other persons entitle you to any special treatment or consideration above and beyond any other Nebraskan that has also employed one or more persons?

A: No, of course not.

Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer have at one point employed another person within this state, entitles you to preferential treatment or consideration of any kind?

A: No, of course not. If I choose to employ someone that decision is up to me. I don't deserve any special treatment or consideration for that fact.

Q: Do you have any concerns TransCanada's fitness as an applicant for a major crude oil pipeline in its preferred location, or ultimate location across the state of Nebraska?

A: Yes, I have significant concerns. I am aware of landowners being treated unfairly or even bullied around and being made to feel scared that they did not have any options but to sign whatever papers TransCanada told them they had to. I am aware of folks being threatened that their land would be taken if they didn't follow what TransCanada was saying. I am aware of tactics to get people to sign easements that I don't believe have any place in Nebraska or anywhere such as TransCanada or some outfit associated with it hiring a pastor or priest to pray with landowners and convince them they should sign TransCanada's easement agreements. I am aware of older folks and widows or widowers feeling they had no choice but to sign TransCanada's Easement and they didn't know they could fight or stand up for themselves. From a more practical standpoint, I am worried that according to their answer to our Interrogatory No. 211, TransCanada only owns and operates one (1) major oil pipeline. They simply do not have the experience with this type of pipeline and that scares me. There are others but that is what I can recollect at this time and if I remember more or my recollection is refreshed I will share those with the Commissioners at the Hearing in August.

Q: **Do you believe TransCanada's proposed method of compensation to you as a landowner is reasonable or just?**

A: No, I do not.

Q: **Do you have any concern about limitations that the construction of this proposed pipeline across your affected land would prevent construction of future structures upon the portion of your land affected by the proposed easement and immediately surrounding areas?**

A: Well yes, of course I do. We would not be able to build many, if any, types of structures directly across or touching the easement, and it would be unwise and I would be uncomfortable to build anything near the easement for fear of being blamed in the future should any damage or difficulty result on my property in regards to the pipeline.

Q: **Do you think such a restriction would impact you economically?**

A: Well yes, of course.

Q: How do you think such a restriction would impact you economically?

A: The future of this land may not be exactly how it's being used as of this moment, and having the restrictions and limiting my ability to develop my land in certain ways presents a huge negative economic impact on myself, my family, and any potential future owner of the property. You have no idea how I or the future owner may want to use this land in the future or the other land across Nebraska potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years ago it would have been hard to imagine all the advances that we have now or how things change. Because the Easement is forever and TransCanada gets the rights in my land forever we have to think with a very long term view. By placing their pipeline on under across and through my land that prevents future development which greatly negatively impacts future taxes and tax revenue that could have been generated by the County and State but now will not. When you look at the short blip of economic activity that the two years of temporary construction efforts may bring, that is far outweighed by the perpetual and forever loss of opportunity and restrictions TransCanada is forcing upon us and Nebraska.

Q: Do you have any concerns about the environmental impact of the proposed pipeline?

A: Yes, I do.

Q: What are some of those concerns?

A: As an affected land owner and Nebraskan, I am concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the environment of my land specifically, as well as the lands near my land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and

leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of my land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of your land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over your land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the groundwater of not only under my land, but also near and surrounding the pipeline route, and in fact, potentially the entire State of Nebraska. Water is life plain and

simple and it is simply too valuable to our State and the country to put at unreasonable risk.

Q: Do you have any concern about the potential impact of the proposed pipeline upon the surface water on, or near or around your land?

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along and near and surrounding the pipeline route, and in fact, across the state of Nebraska.

Q: Do you have any concern about the potential impacts of the proposed pipeline upon the wildlife and plants, other than your growing crops on or near your land?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the wildlife and the plants, not only that are located on or can be found upon my land, but also near and along the proposed pipeline route.

Q: Do you have any concerns about the effects of the proposed pipeline upon the fair market value of your land?

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the fair market value at any point in the future, especially at that point in which I would need to sell the property, or someone in my family would need to sell the property. I do not believe, and certainly would not be willing to pay, the same price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon

my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 6, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

Q: Do you believe that TransCanada's preferred route as found on page 5 of its Application, and as found on Attachment No. 7, here to your testimony, is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe that the Keystone mainline alternative route as shown on Attachment No. 7 included with your testimony here is a major oil pipeline route that is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe the portion of the proposed pipeline within Nebraska as found in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe there is any potential route for the proposed Keystone XL Pipeline across, within, under, or through the State of Nebraska that is in the public interest of the citizens of Nebraska?

A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: **What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?**

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with from TransCanada’s own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to our Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working specifically on behalf of TransCanada and according to their answer to Interrogatory No. 196, as

of May 5, 2017 they only employ one (1) temporary working within Nebraska. Further, according to their answer to Interrogatory No. 199, TransCanada would only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was constructed on its Preferred Route or its Mainline Alternative Route.

Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply because it would cross your land?

A: No, absolutely not. I am opposed to this project because it is not in the public interest, neither within my community nor within our state.

Q: Would you be happier if instead of crossing your land, this proposed pipeline was to cross someone else's land?

A: No, absolutely not. I would get no joy in having a fellow citizen of my state have the fear and anxiety and potential foreseeable risks and negative impacts that this type of a project carrying this type of product brings foisted upon anyone in this state or any other state.

Q: Do you think there is any intelligent route for the proposed Keystone XL Pipeline to cross the state of Nebraska?

A: I don't believe there is an intelligent route because as I have stated I don't believe this project anywhere within Nebraska is within the public interest. However, if you are presenting a hypothetical that if this proposed KXL Pipeline absolutely had to go somewhere in the state of Nebraska, the only intelligent route I believe would be to twin or closely parallel the existing Keystone I Pipeline. Both the preferred route and the mainline alternative routes are economic liabilities our state cannot risk.

Q: What do you rely upon to make that statement?

A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I, already exists in that area is reason enough as it is not in our best interest or the public interests to have more major oil pipelines crisscrossing our state. Second, they have all the infrastructure already there in terms of relationships with the counties and local officials and first responders along that route. Third, they have

already obtained easements from all the landowners along that route and have relationships with them. Fourth, that route avoids our most sensitive soils, the sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala Aquifer. Sixth, they have already studied that route and previously offered it as an alternative. Seventh, it just makes the most sense that as a state we would have some intelligent policy of energy corridors and co-locating this type of infrastructure near each other.

Q: Have you fully expressed each and every opinion, concern, or fact you would like the Public Service Commissioners to consider in their review of TransCanada's Application?

A: No, I have not. I have shared that which I can think of as of the date I signed this document below but other things may come to me or my memory may be refreshed and I will add and address those things at the time of the Hearing in August and address any additional items at that time as is necessary. Additionally, I have not had an adequate amount of time to receive and review all of TransCanada's answers to our discovery and the discovery of others so it was impossible to competently and completely react to that in my testimony here and I reserve the right to also address anything related to discovery that has not yet concluded as of the date I signed this document below. Lastly, certain documents requested have not yet been produced by TransCanada and therefore I may have additional thoughts on those I will also share at the hearing as needed.

Q: What is it that you are requesting the Public Service Commissioners do in regards to TransCanada's application for the proposed Keystone XL Pipeline across Nebraska?

A: I am respectfully and humbly requesting that the Commissioners think far beyond a temporary job spike that this project may bring to a few counties and beyond the relatively small amount of taxes this proposed foreign pipeline would possibly generate. And, instead think about the perpetual and forever impacts of this pipeline as it would have on the landowners specifically, first and foremost, but

also thereby upon the entire state of Nebraska, and to determine that neither the preferred route nor the Keystone mainline alternative route are in the public interest of the citizens of the state of Nebraska. And if the Commissioners were inclined to modify TransCanada's proposed routes and were to be inclined to grant an application for a route in Nebraska, that the only potential route that would make any intelligent sense whatsoever would be twinning or near paralleling of the proposed KXL with the existing Keystone I pipeline. It simply does not make sense to add yet another major oil pipeline crisscrossing our state creating new pumping stations, creating new impacts on additional counties and communities and going through all of the court processes with myself and other landowners like me when this applicant already has relationships with the landowners, the towns and the communities along Keystone I, and that Keystone I is firmly outside of the sand hills and a significantly further portion away from the heart of the Ogallala Aquifer than the preferred route or the Keystone mainline alternative route.

Q: Does Attachment No. 8 here contain other documents you are competent to speak about that you wish to be part of your testimony and to discuss in more detail as needed at the August 2017 Hearing?

A: Yes.

Q: Are all of your statements in your testimony provided above true and accurate as of the date you signed this document to the best of your knowledge?

A: Yes, they are.

Q: Thank you, I have no further questions at this time and reserve the right to ask you additional questions at the August 2017 Hearing.

Richard M. Kilmurry
Richard M. Kilmurry

Subscribed and Sworn to me before this 31 day of May, 2017.

Joyce Seger
Notary Public



Attachment 8.1

U.S. Not Prepared for Tar Sands Oil Spills, National Study Finds

Report urges new regulations, research, and technology to respond to spills of diluted bitumen.



Photo courtesy Sam LaSusa

Oil gathers in a sheen near the banks of the Kalamazoo River more than a week after a spill of crude oil, including tar sands oil, from Enbridge Inc.'s Line 6B pipeline in 2010. It was the largest inland oil spill in U.S. history. *Click image to enlarge.*

By Codi Kozacek

Circle of Blue

Spills of heavy crude oil from western Canada's tar sands are more difficult to clean up than other types of conventional oil, particularly if the spill occurs in water, a new study by a [high-level committee](#) of experts found. Moreover, current regulations governing emergency response plans for oil spills in the United States are inadequate to address spills of tar sands oil.

[The study](#) by the U.S. National Academies of Sciences, Engineering, and Medicine confirmed what scientists, emergency responders, and conservationists knew anecdotally from a major oil spill that contaminated Michigan's Kalamazoo River in 2010 and another spill in Mayflower, Arkansas in 2013. Tar sands crude, called diluted bitumen, becomes denser and stickier than other types of oil after it spills from a pipeline, sinking to the bottom of rivers, lakes, and estuaries and coating vegetation instead of floating on top of the water.

"[Diluted bitumen] weathers to a denser material, and it's stickier, and that's a problem. It's a distinct problem that makes it different from other crude."

—Diane McKnight,

Chair

Committee on the Effects of Diluted Bitumen on the Environment

"The long-term risk associated with the weathered bitumen is the potential for that [oil] becoming submerged and sinking into water bodies where it gets into the sediments," Diane McKnight, chair of the committee that produced the study and a professor of engineering at the University of Colorado Boulder, told Circle of Blue. "And then those sediments can become resuspended and move further downstream and have consequences not only at the ecosystem level but also in terms of water supply."

“It weathers to a denser material, and it’s stickier, and that’s a problem. It’s a distinct problem that makes it different from other crude.” McKnight added. Weathering is what happens after oil is spilled and exposed to sunlight, water, and other elements. In order to flow through pipelines, tar sands crude oil is mixed with lighter oils, which evaporate during the weathering process. In a matter of days, what is left of the diluted bitumen can sink.

The study’s findings come amid an expansion in unconventional fuels development and transport in North America. Over the past decade, Canada became the world’s fifth largest crude oil producer by developing the Alberta tar sands. U.S. imports of Canadian crude, much of it from tar sands, [increased 58 percent](#) over the past decade, according to the U.S. Energy Information Administration.

Though oil prices are at a seven-year low, and market turbulence is expected to persist for several more years, tar sands developers are working to double the current tar sands oil production — around 2.2 million barrels per day — by 2030. [Pipelines to transport all of the new oil are expanding too](#), producing a greater risk of spills.

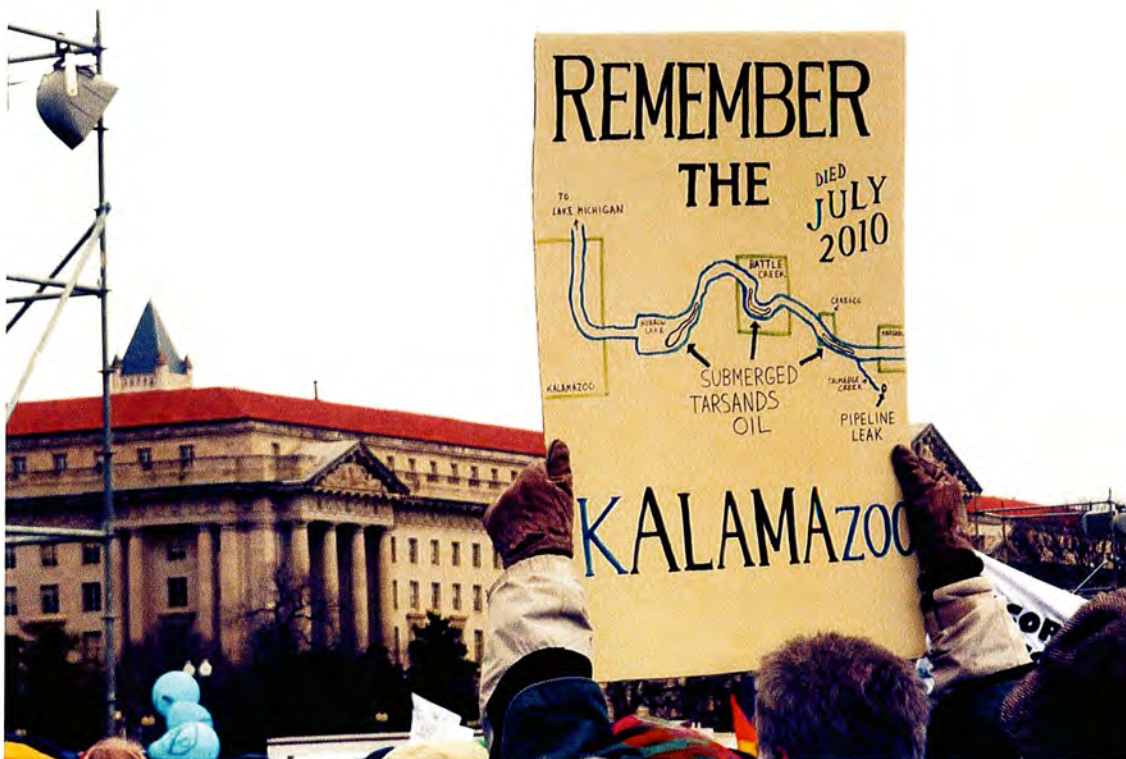


Photo courtesy DCErica via [Flickr Creative Commons](#)

A sign held by a protester at a 2013 climate rally in Washington, D.C. notes the lingering difficulties associated with spills of diluted bitumen –namely **that** the oil can become submerged in the water. *Click image to enlarge.*

Whether tar sands producers achieve that level of oil supply is not assured. Public pressure is mounting in Canada and the United States to rein in tar sands development due to considerable environmental damage and heavy carbon emissions. U.S. President Barack Obama last month scrapped the Keystone XL pipeline, an 800,000-barrel-per-day project to move crude oil from Canada's tar sands to Gulf of Mexico refineries. An international movement to divest from fossil fuels and a [legally binding global deal](#) to cut carbon emissions –if it is signed in Paris– could curb demand for tar sands oil.

The National Academies of Sciences, Engineering, and Medicine study adds new data to arguments made by critics of tar sands development.

“The study really confirms a lot of the information that has been out there, there are no real surprises,” Jim Murphy, senior counsel for the National Wildlife Federation, told Circle of Blue. “You don’t want these things to be affirmed because it’s **bad** news for communities. But the good part about a study like this is hopefully it will prompt some action. Some folks were hiding behind the lack of a study like this, saying we don’t really know. Those excuses have gone away.”

“The chief takeaway is that this is a different oil, it presents different challenges, and responders and regulators simply don’t have the structures in place to deal with the challenges,” he added.

“The chief takeaway is that this is a different oil, it presents different challenges, and responders and regulators simply don't have the structures in place to deal with the challenges.”

**–Jim Murphy,
Senior Counsel
National Wildlife Federation**

Nonetheless, energy companies are pursuing pipeline expansions, most notably in the Midwest and Great Lakes regions. Enbridge, Canada's largest transporter of crude oil, operates a 3,000-kilometer (1,900-mile) pipeline network, known as the Lakehead System, that carries crude oil from Canada to refineries on the Great Lakes. The Lakehead system, in concert with Enbridge's Canadian main line, is capable of transporting 2.62 million barrels of oil per day. The pipeline responsible for the 2010 oil spill in Kalamazoo was part of the Lakehead system. A link in the Lakehead system ruptured in 2010 and spilled more than 3 million liters (843,000 gallons) of tar sands oil [into southern Michigan's Kalamazoo River](#). It was the largest inland oil spill in U.S. history and its effects still linger because of oil that sank and is embedded in the river's sediments.

Enbridge is currently pursuing [upgrades to its Alberta Clipper pipeline](#), which runs through Minnesota and Wisconsin, in order to boost the line's capacity to 800,000 barrels per day from 450,000 barrels per day. A [second project](#) aims to increase the capacity of Line 61, a pipeline that runs from Wisconsin to Illinois, from 560,000 barrels per day to 1.2 million barrels per day. Opposition to the company's operation of a pipeline that runs beneath the Straits of Mackinac, where Lake Michigan and Lake Huron join, has been especially fierce, though the line does not currently carry tar sands oil.

"I think at the very least we should be saying no to more tar sands through the [Great Lakes] region until we get a firm handle on how to deal with the unique challenges that tar sands spills present," Murphy said. "We should also be taking a hard look, as the president did with the Keystone XL decision, about the other negative impacts of more tar sands oil, like the consequences in Alberta with the habitat destruction there, and also the higher carbon pollution content of the fuel."

The National Academies study concluded that the characteristics of diluted bitumen are "highly problematic for spill response because 1) there are few effective techniques for detection, containment, and recovery of oil that is submerged in the water column, and 2) available techniques for responding to oil that has sunken to the bottom have variable effectiveness depending on the spill conditions."

"Broadly, regulations and agency practices do not take the unique properties of diluted bitumen into account, nor do they encourage effective planning for spills of diluted bitumen," it continued.



Photo courtesy NWFblogs via [Flickr Creative Commons](#)

A tar ball recovered on the edge of a cove in Mayflower, Arkansas, after tar sands crude spilled from ExxonMobil's Pegasus pipeline in 2013. *Click image to enlarge.*

The study's authors made a series of recommendations to help reduce the damage from future tar sands spills, including:

- Update regulations that would require pipeline operators to identify and provide safety sheets for each crude oil transported by the pipeline, catalogue the areas and water bodies that would be most sensitive to a diluted bitumen spill, describe how they would detect and recover sunken oil, provide samples and information about the type of oil spilled to emergency officials, and publicly report the annual volumes and types of crude oil that pass through each pipeline.
- Require the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency that regulates pipelines in the United States, to review spill response

plans in coordination with the U.S. Environmental Protection Agency and U.S. Coast Guard to determine if the plans are capable of responding to diluted bitumen spills.

- Develop methods to detect, contain, and recover oil that sinks to the bottom of water bodies.
- Require government agencies at the federal, state, and local level to use industry-standard names for crude oils when planning spill responses.
- Revise oil classifications used by the U.S. Coast Guard to indicate that diluted bitumen can sink in water.
- Collect data to improve modeling of diluted bitumen oil spills.
- Improve coordination between federal agencies and state and local governments when planning and practicing oil spill response exercises.
- Develop a standard method for determining the adhesion –a measure of how sticky the oil is–of diluted bitumen in the event of a spill.

After the study's release, PHMSA said it would develop a bulletin advising pipeline operators about the recommendations and urge voluntary improvements to their spill response plans. The agency also plans to hold a workshop next spring to hear public input on how to implement the recommendations, coordinate with other federal organizations to “advance the recommendations”, and work with industry representatives to improve spill response planning.

“We appreciate the work the National Academy of Sciences has done over the last few years in analyzing the risks of transporting diluted bitumen, including its effects on transmission pipelines, the environment and oil spill response activities,” Artealia Gilliard, PHMSA spokesperson and director for governmental, international and public affairs, said in a statement. “All pipelines transporting crude oil or any other hazardous liquid are required to meet strict federal safety regulations that work to prevent pipeline failures and to mitigate the consequences of pipeline failures when they occur.”

Attachment 8.3

The Keystone XL Tar Sands Pipeline Will Hurt More than Help Job Creation

The total number of jobs the Keystone XL Pipeline would create is far lower than those touted by pipeline proponents. According to the State Department, the pipeline would create 35 permanent full-time jobs¹ and 1,950 construction jobs that would last for two years.² The recent claim that Keystone XL would create 42,000 jobs is based on theoretical estimates of all short-term, indirect effects of spending by the much smaller number of people who would be directly employed.

Keystone XL would likely have negative impacts on job creation. A spill would be detrimental to the agriculture industry and cleanup efforts would be costly. Keystone XL would also undermine the expansion of the clean energy sector, which has proven to be more effective at job creation than the fossil fuel industry.

A tar sands spill from Keystone XL would threaten jobs

In the event of a major pipeline spill, Keystone XL could cost thousands of jobs along its route and require high cleanup expenditures. A study from the University of Nebraska has found that Keystone XL would likely experience 91 major pipeline spills over the project's 50-year lifespan.³

Keystone XL would threaten the agricultural sector, which directly employs more than 500,000 people in the states the pipeline would traverse and which generates billions of dollars in revenue.⁴ 79 percent of the land that would be affected by Keystone XL is agricultural and rangeland.⁵ The pipeline would also run through the Ogallala Aquifer, which supplies 30 percent of the groundwater used for irrigation in the U.S.⁶ Cleaning up tar sands oil spills is both difficult and costly, as witnessed following spills into the Kalamazoo River and in Mayflower, Arkansas.

Keystone XL would impede the growth of the clean energy sector

Business owners have argued that Keystone XL would impose nearly \$100 billion in climate-related costs on the economy.⁷ In addition, Keystone XL would undermine the growth of the clean energy sector. The American Sustainable Business Council, representing more than 200,000 businesses across the country, has called on the administration to reject the pipeline.⁸

The clean energy sector is more conducive to job creation than Keystone XL would be. In the third quarter of last fiscal year, 18,000 new clean energy jobs were created nationwide.⁹ Investments in clean energy create four times as many jobs as the same amount of investment in petroleum-based projects.¹⁰

¹ U.S. State Department, Keystone XL Final SEIS, January 2014, p. 4.10-31.

² U.S. State Department, Keystone XL Final SEIS, January 2014, p. ES-19.

³ John Stansbury, *Analysis of Frequency, Magnitude and Consequence of Worst-Case Spills From the Proposed Keystone XL Pipeline*, Nebraska Water Center, 2011, <http://watercenter.unl.edu/downloads/2011-Worst-case-Keystone-spills-report.pdf>.

⁴ Lara Skinner & Sean Sweeney, *The Impact of Tar Sands Pipeline Spills on Employment and the Economy*, Cornell University Global Labor Institute, 2012, https://www.ilr.cornell.edu/globallaborinstitute/research/upload/GLI_Impact-of-Tar-Sands-Pipeline-Spills.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Environmental Entrepreneurs, *Letter to Secretary Kerry*, March 7, 2014, <http://switchboard.nrdc.org/blogs/aswift/E2%20Letter%20Opposing%20the%20Keystone%20XL%20Tar%20Sands%20Oil%20Pipeline.pdf>.

⁸ *Business Leaders Call on Senate to Reject Keystone Pipeline*, American Sustainable Business Council, November 18, 2014, <http://asbcouncil.org/news/press-release/business-leaders-call-senate-reject-keystone-pipeline#.VKwRumTF-BI>.

⁹ Environmental Entrepreneurs, *Clean Energy Works for Us: Q3 2014 Jobs Report*, 2014, http://cleaneconomyworksforum.org/wp-content/uploads/2014/11/2014_Q3_Report_final.pdf.

¹⁰ Robert Pollin et al., *Green Recovery: A Program to Create Good Jobs and Start Building a Low-Carbon Economy*, Political Economy Research Institute, 2008, http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/peri_report.pdf.

Marshall, Michigan Tar Sands Spill into Kalamazoo River - 2010

On July 26, 2010, a pipeline operated by Enbridge Inc. ruptured releasing 843,000 gallons of tar sands diluted bitumen into Talmadge Creek which flows into the Kalamazoo River near Marshall, Michigan. The tar sands spill eventually contaminated 35 miles of the Kalamazoo River.¹ The rupture of this pipeline (called line Line 6B) is the costliest inland oil spill cleanup in U.S. history. Significantly, this spill drew national attention to the fact that tar sands oil sinks in water (unlike conventional oil). Despite more than four years of cleanup efforts overseen by the U.S. Environmental Protection Agency, the Kalamazoo River is still contaminated with tar sands.²

1. **Most expensive inland oil spill in U.S. history:** To date, the cleanup cost has exceeded \$1 billion. Cleanup requires river-bottom dredging to remove the submerged tar sands that have remained since 2010. Even as this expensive and time-consuming process has taken place, there is evidence that dredging and other river-bottom removal techniques may also be leading to a wider spread of the spilled tar sands oil.³ Traditional oil spill clean tools used for conventional oil—like surface skimmers, vacuum trucks, and absorbent booms—are largely ineffective for tar sands because large quantities sink and become submerged oil.⁴
2. **Tar sands oil sinks:** The response and cleanup of the Kalamazoo river spill has confirmed longstanding concerns among scientists and environmental monitors that tar sands do not float like conventional oil if spilled in water.⁵ On the Kalamazoo, this has proved to be the case as the lighter, highly volatile diluting agents quickly evaporated, leaving behind the highly viscous, heavy bitumen, which sunk to the river bottom and has not significantly biodegraded over time. Even the State Department has acknowledged that a spill of tar sands presents different challenges than a conventional oil spill but failed to consider this in its environmental review.⁶
3. **Leak detection technology was ineffective:** The pipeline company operating Line 6B was not the first one to notice the rupture. Despite modern spill detection technology (similar to that proposed for Keystone XL), the rupture was reported by a member of the public 17 hours after the pipeline had ruptured.⁷

Following the spill, residents in the area reported adverse health effects including rashes, headaches, breathing problems and nausea.⁸ The Talmadge Creek ecosystem was also decimated, as wildlife including turtles, birds, mammals, fish and invertebrates were coated in oil and died.⁹

¹ EPA Response to Enbridge Spill in Michigan, updated October 16, 2014, <http://www.epa.gov/enbridgespill/>.

² *Ibid.*

³ Lisa Song, "Cleanup of 2010 Mich. Dilbit Spill Aims to Stop Spread of Submerged Oil," *Inside Climate News*, March 27, 2013, <http://insideclimatenews.org/news/20130327/cleanup-2010-mich-dilbit-spill-aims-stop-spread-submerged-oil>.

⁴ Kari Lydersen, "A Year After Pipeline Spill, Tar Sands Oil Still Plagues a Michigan Community," *On Earth*, July 25, 2011, <http://archive.oneyearth.org/article/tar-sands-oil-plagues-a-michigan-community>.

⁵ Lisa Song, "Dilbit Sinks in Enbridge Oil Spill, but Floats in Its Lab Study," *Inside Climate News*, March 14, 2013, <http://insideclimatenews.org/news/20130314/tar-sands-dilbit-sinks-enbridge-oil-spill-floats-its-lab-study>.

⁶ Final Supplemental Environmental Impact Statement for the Keystone XL Pipeline Project, Chapter 4, Potential Releases, <http://keystonepipeline-xl.state.gov/documents/organization/221189.pdf>.

⁷ Pipeline Accident Report, Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, National Transportation Safety Board, July 10, 2012, <https://www.nts.gov/investigations/summary/PAR1201.html>. Though the pipeline's leak detection system issued alarms consistent with a rupture, operators misinterpreted the alarms and continued to keep the pipeline open as it poured oil into the environment.

⁸ Keith Matheny, "Three years after oil spill, a slow recovery haunts Kalamazoo River," *Detroit Free Press*, June 24, 2013, <http://archive.freep.com/article/20130623/NEWS06/306230059/Kalamazoo-River-oil-spill>.

⁹ *Ibid.*

Mayflower, Arkansas Tar Sands Spill - 2013

On March 29, 2013, ExxonMobil's 95,000 barrel per day Pegasus Pipeline ruptured, sending roughly 5,000 barrels (210,000 gallons) of tar sands diluted bitumen through the community of Mayflower, Arkansas.¹ Some of the spilled tar sands crude flowed through people's yards and down their streets.² While some of the very closest homes to the spill were evacuated, many who lived just a few hundred yards from the spilled diluted bitumen were not – and were exposed to dangerous levels of benzene, along with other pollutants such as octane, cyclohexane, heptane, hexane, toluene, butane, pentane and more.³ Some community members experienced severe headaches, nausea, and respiratory infections following the spill.⁴ Even nearly a year later, residents still were facing headaches, dizziness, nausea and other health challenges – while being told it was safe to live there – so that some have abandoned their homes, unable to find buyers.⁵

The Pegasus pipeline runs from Patoka, Illinois through Missouri and Arkansas to Corsicana and Nederland, Texas.⁶ At the time of the spill, the pipeline was 65 years old, and had been built to transport lighter crudes at lower pressures in the opposite direction—but was reversed in 2006 to transport heavier tar sands diluted bitumen at higher pressures to the Gulf Coast.⁷ Until 2012, Exxon's 90,000 bpd Pegasus pipeline was the only pipeline to move Canadian diluted from the Midwest to the Gulf Coast.

Following the spill, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Corrective Action Order, requiring ExxonMobil to shut down the pipeline until certain conditions were met, and initiated an investigation of the spill. PHMSA found nine probable violations of safety rules that may have contributed to the spill, and ExxonMobil was fined nearly \$2.7 million.⁸ On March 31, 2014 – just over a year after the spill – PHMSA approved ExxonMobil's request to resume operations on the Pegasus Pipeline at a reduced pressure of 80% of the operating pressure at the time of the pipeline failure.⁹

As illustrated by the Mayflower spill and the 2010 tar sands spill into the Kalamazoo River, tar sands is risky to transport, and poses health risks and clean-up challenges when it does spill. Further, the pipeline companies are not doing their jobs to ensure that the communities through which they are transporting tar sands stay safe, and U.S. government regulation of tar sands transport is inadequate. Building more tar sands pipelines like Keystone XL and exacerbating these risks is the wrong path forward.

¹ PHMSA, ExxonMobil Pipeline Incident – Mayflower, Ark., <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfmt=print>.

² Exxon Pipeline Breaks in Arkansas, YouTube, March 31, 2013, <https://www.youtube.com/watch?v=u30m8U6VP3E#t=12>.

³ Sam Bifling, Ark. Spill Victims on 'Wrong' Side of Fence Left to Fend for Themselves, August 7, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130807/ark-spill-victims-wrong-side-fence-left-fend-themselves>

⁴ Ibid.

⁵ RT, Exxon oil spill town 'deserted land', residents still getting sick, forced to abandon homes, February 11, 2014, <http://rt.com/usa/mayflower-keystone-oil-pipeline-410/>.

⁶ ExxonMobil Pipeline, Central North crude maps, http://www.exxonmobil.com/Images/EMPCo/central_north_crude2.pdf.

⁷ John H. Cushman, Jr., Federal Rules Don't Control Pipeline Reversals Like Exxon's Burst Pegasus, April 3, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130403/federal-rules-dont-control-pipeline-reversals-exxons-burst-pegasus>.

⁸ Timothy Gardner and Alan Raybould, Exxon faces \$2.7 million fine for Arkansas pipeline spill, November 6, 2013, Reuters, <http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>.

⁹ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Letter to ExxonMobil Pipeline Company, Re: CFP No. 4-2013-5006H, Approval of Restart Plan, Southern Segment of the Pegasus Pipeline, March 31, 2014,

http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_325C1FBC0A971C60C2DC5268CB2676A341960000/filename/420135006H_Approval_of_Restart_Plan_Southern_Segment_REV6_03312014.pdf.

Nebraska and South Dakota State Processes Currently Under Way Regarding the Proposed Keystone XL Tar Sands Pipeline

Nebraska

The U.S. State Department's review of the Keystone XL pipeline has been suspended, awaiting a decision by the Nebraska Supreme Court. Pending the court's ruling, which could come any Friday in 2015, **there is no approved route for the pipeline through Nebraska.**

The case, *Thompson v. Heineman*,¹ hinges on whether the Nebraska Legislature violated the state's constitution when it passed legislation enabling Governor Dave Heineman to approve the pipeline through an expedited process.² The challenged law also gave TransCanada eminent domain rights without having to first secure a federal permit.³

A Nebraska District court agreed with the landowners in a holding issued on February 9, 2014, stating that, as a "common carrier," the pipeline could not be green-lighted by the Governor, but rather only by the Nebraska's Public Service Commission (PSC).⁴ The Nebraska Supreme Court heard oral arguments in the state's appeal on September 5, 2014. A final decision on the case is expected at any time. If the District Court holding is upheld, TransCanada will have to apply to the PSC for a route. The PSC has the authority to propose a new route in a process that is expected to take nine or more months.

South Dakota

TransCanada's permit for building Keystone XL through South Dakota expired in June 2014. The company filed for a re-certification by the South Dakota Public Utilities Commission (PUC) in September 2014.⁵

On October 28, 2014 the PUC granted "intervenor" status to 43 individuals and groups from South Dakota and Nebraska, many of whom who are challenging the construction and purpose of the pipeline. As intervenors, they will have the opportunity to voice their opposition to Keystone XL, participate in the discovery process, and call TransCanada officials to the stand under oath at hearings that will be held early 2015. The final evidentiary hearing is set for May 5 - 6, 2015.⁶ Until the Public Utilities Commission decides whether to grant or decline certification, **Transcanada does NOT have a permitted route through South Dakota.**

Public concern in South Dakota over the proposed pipeline has grown tremendously since the original permit application submitted over four years ago. The unified tribal nations of the Oceti Sakowin, aka the Great Sioux Nation, are challenging the permit on the grounds of treaty rights,⁷ water rights protection and a lack of proper consultation required by federal law.⁸

¹ *Thompson v. Heineman*, No. S-14-000158, (Neb. Supreme Court, filed Apr. 21, 2014).

² *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

³ Nebraska Legislature, Legislative Bill 1161, Approved by the Governor April 17, 2012, <http://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB1161.pdf>.

⁴ *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

⁵ *Keystone XL Pipeline Updates*, SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, <http://puc.sd.gov/Dockets/HydrocarbonPipeline/keystoneupdate.aspx>.

⁶ Joe Duggan, *Keystone XL opponents will have a chance to be heard in South Dakota*, OMAHA.COM (Oct. 30, 2014), http://www.omaha.com/news/metro/keystone-xl-opponents-will-have-a-chance-to-be-heard/article_1c21b596-392e-5760-90be-af9a34aeeb73.html.

⁷ Tom Poor Bear, *Memo from Oglala Sioux Tribe*, scribd.com (Dec. 9, 2014) <http://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

⁸ Advisory Council on Historic Preservation, <http://www.achp.gov/106summary.html>.

Tribal and Treaty Rights Impacted by the Proposed Keystone XL Tar Sands Pipeline

The Keystone XL tar sands pipeline's proposed route violates basic tenets of Federal Indian Law. The pipeline would infringe upon treaty-protected lands, especially in South Dakota. TransCanada has also failed to properly consult with tribal leaders on plans for the pipeline's construction, violating the U.S. Government's trust obligation toward tribes.¹

Treaty Violation

Although it does not infringe upon reservation land, the current proposed Keystone XL route crosses land protected by treaty. On April 29, 1868, the United States entered into a peace treaty at Fort Laramie with the Oglala Sioux Tribe. The United States agreed in the treaty that all lands west of the Missouri River and within present-day South Dakota would be "set apart for the absolute undisturbed use and occupation" by the tribe and that "no persons ... shall ever be permitted to pass over, settle upon, or reside in the territory described in this article."

The Fort Laramie Treaty's continued enforceability was reinforced in the 1980 Supreme Court case *United States v. Sioux Nation of Indians*.² This decision upheld a Court of Claims ruling that the United States' acquisition of the Black Hills, a region included in the Fort Laramie Treaty, constituted a taking under the 5th Amendment. Accordingly, the Court ruled, the U.S. Government was obligated under the treaty to provide the affected Sioux Tribe with "just compensation."

The Tribal Trust Doctrine and the Duty to Consult

Neither the State Department nor TransCanada have properly consulted with the tribes as required by the federal government's tribal trust responsibility.

The U.S. Government has a trust responsibility to Indian Nations, which is expressed in the Constitution, treaties, statutes, case law, and executive orders. This trust duty, which originally arose from tribes' land cessations, obligates the federal government to protect tribes' unique interests.³ This trust obligation entails a duty to consult with Indian tribes on any activity that would affect their land. This duty is expressed in Executive Order 13175 issued by President Clinton and reinforced by President Obama's Memorandum for the Heads of Executive Departments and Agencies issued on November 5, 2009.

TransCanada has failed to adequately consult with tribes potentially affected by the Keystone XL Pipeline, often claiming that strictly informational meetings have satisfied this requirement. Additionally, TransCanada has sidestepped the consultation process by hiring members of non-local tribes to survey areas that may be of cultural significance to the tribes that actually reside there. This deprives the impacted tribes of any meaningful consultation on Keystone XL's effects on their cultural resources.

The National Historic Preservation Act's Duty to Consult

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), federal agencies must take into account projects' potential effects on locations or objects eligible for inclusion in the National Register prior to authorizing federal spending on that project. Eligible locations or objects may include "[p]roperties of traditional religious and cultural importance to an Indian tribe." Because the Keystone XL pipeline's proposed route runs through traditional tribal lands, the State Department is required to consult with the tribes that have spiritual, cultural, and historical ties to the land along the pipeline route. To date, it has failed to do so.

¹ Memorandum from Tom Poor Bear, Vice President Oglala Sioux Tribe, Dec. 2014, available at <https://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

² 448 U.S. 371.

³ Mary Christina Wood, *Protecting the Attributes of Native Sovereignty: A New Trust Paradigm for Federal Actions Affecting Tribal Lands and Resources*, 1995 UTAH L. REV. 109, 112 (1995).

Challenges associated with Proposed Tar Sands Pipelines

Enbridge's Northern Gateway (525,000 bpd)

Enbridge's proposed Northern Gateway project is a controversial 525,000 barrel per day (bpd) tar sands pipeline across the mountainous terrain and salmon-bearing rivers of north-central British Columbia. In May 2013, the British Columbia government opposed the project in its formal comments to the federal review panel.¹ Polling shows that more than two-thirds of British Columbians oppose the Northern Gateway project.² Moreover, First Nations, with powerful treaty rights which were substantially strengthened by a recent Canadian Supreme Court ruling, have brought a dozen lawsuits against the Northern Gateway project.³ Amid controversies surrounding the project and following a damaging referendum in Kitimat, British Columbia, Northern Gateway's Executive Vice President Janet Holder, the public face for the project, announced her retirement.⁴ In its environmental review of Keystone XL, the State Department considered Northern Gateway too uncertain and speculative to include in its forecast.⁵

Kinder Morgan's TransMountain Pipeline (additional 590,000 bpd)

The expansion of the TransMountain pipeline, another pipeline through British Columbia, would require new permits, the renegotiation of landowner agreements along the route, agreements with First Nations, the dredging of the Vancouver harbor and changes in regulations to allow increased tanker traffic. TransMountain passes through fifteen First Nation's communities and affect many more traditional territories, many of which have stated opposition to the project.⁶ Objections from local political leaders and the public have already prompted the National Energy Board to delay its final report on the project to January 2016.⁷

TransCanada's Energy East Pipeline (1.1 million bpd)

TransCanada's Energy East pipeline would require converting around 3,000 kilometers (1,864 miles) of existing natural gas pipeline and construction of around 1,400 kilometers (870 miles) of new pipe, with the most construction expected in Quebec. While TransCanada only filed its application in late October, 2014, opposition to the project is already significant and growing. Both the governments of Quebec and Ontario have filed as interveners for the project's review.⁸ The impact of building a new pipeline creates a significant hurdle for TransCanada, as Quebec has long touted its pro-environment stance and is not eager to play a role in enabling tar sands expansion plans in Alberta.⁹ At the same time, Ontario's

¹ Argument of the Province of British Columbia Re: Hearing Order OH-4-2011 and File No. OF-Fac-Oil-N304-2010-01 01 Enbridge Northern Gateway Project Application, May 31, 2013, http://www.env.gov.bc.ca/main/docs/2013/BC-Submission-to-NGP-JointReviewPanel_130531.pdf; "B.C. officially opposes Enbridge Northern Gateway pipeline," CBC News, May 31, 2013, <http://www.cbc.ca/news/canada/british-columbia/story/2013/05/31/bc-northern-gateway-rejected.html>.

² "Your Insights on the Northern Gateway Pipeline," *Insights West*, February 4, 2013, <http://www.insightswest.com/news/your-insights-on-the-northern-gateway-pipeline/>.

³ Mychaylo Prystupa, "Janet Holder Quits Northern Gateway Pipeline," *Vancouver Observer*, November 12, 2014, <http://www.vancouverobserver.com/news/janet-holder-quits-northern-gateway-project>.

⁴ *Ibid.*

⁵ State Department, Final SEIS, Jan. 31, 2014, 2.2-34, <http://keystonepipeline-xl.state.gov/documents/organization/221155.pdf>.

⁶ Julie Gordon, "Kinder Morgan Canada pipeline plans hits a mountain of opposition," *Reuters*, October 21, 2014, <http://www.reuters.com/article/2014/10/21/us-canada-pipeline-kinder-morgn-eng-idUSKCN0IA15N20141021>.

⁷ Markham Hislop, "Social license: Enbridge, Kinder Morgan losing BC battle," *Beacon News*, November 15, 2014, <http://beaconnews.ca/blog/2014/11/social-licence-enbridge-kinder-morgan/>.

⁸ Shawn McCarthy, "Opposition builds to Energy East," *The Globe and Mail*, October 13, 2014, <http://www.theglobeandmail.com/report-on-business/opposition-builds-to-energy-east-pipeline-plan/article21082836/>.

⁹ Gerrit De Vynck, "TransCanada Eastern Pipeline Draws Opposition: Corporate Canada," *Bloomberg News*, August 6, 2013, <http://www.businessweek.com/news/2013-08-06/transcanada-eastern-pipeline-draws-opposition-corporate-canada>.

Eminent Domain and the Keystone XL tar sands pipeline

The House and Senate bills that would approve the Keystone XL tar sands pipeline in the 114th Congress -- H.R. 3 and S. 1 -- do nothing to protect property rights. Despite the clause titled "Private Property Savings Clause," the bill's language does nothing to change the flawed eminent domain laws and process that uses eminent domain for private gain, and in fact further legitimizes these unjust processes.¹

TransCanada has used eminent domain on landowners in every state along the proposed pipeline route, except in Nebraska. TransCanada makes frequent threats of using eminent domain on Nebraskans, and has done so since 2010, even though they do not have the current legal ability because of the landowner legal victory last year. That case is now in front of the Nebraska Supreme Court. TransCanada still does not have a route or a permit and therefore cannot use eminent domain in Nebraska.

Eminent domain is a federal and state-by-state legal process for the government to take land for "public purpose."² Over the years, oil and gas companies have abused eminent domain by seizing land for private use. The use of eminent domain for private gain must have a federal and state-based fix to protect property rights. The House of Representatives attempted to give some fixes to eminent domain in a bill that passed last year, however that bill exempts the Keystone XL pipeline.³

Keystone XL is one example of how a company uses the threat of, and/or the actual use of, eminent domain to secure contracts with landowners to then turn around to elected officials and the general public to show that they have "landowner support."

One of the many negative impacts of eminent domain on landowners is if Keystone XL were to be denied, in many of the early contracts forced on landowners, there is no clause that states the land is then returned to the property owner. That means TransCanada can then turn around and sell that land easement to another pipeline company and the landowner has no legal say in the matter.

Dave Domina, the lead attorney in the Nebraska case for the landowners, wrote extensively about routing and eminent domain in a memo to all Nebraska elected officials in October 2011. The memo can be found online and has extensive legal citations for further reading.⁴

¹ This section of H.R. 3 states that "Nothing in this Act alters any Federal, State, or local process or condition in effect on the date of enactment of this Act that is necessary to secure access from an owner of private property to construct the pipeline and cross-border facilities described in subsection (a). 114th Congress, 1st Session, H.R. 3, <http://thomas.loc.gov/cgi-bin/query/z?c114:H.R.3>;

² Eminent domain is part of the US Constitution, the Fifth Amendment's takings clause. National Eminent Domain Power, Cornell Law School, http://www.law.cornell.edu/anncon/html/amdt5bfrag4_user.html.

³ H.R. 1944, the Private Property Rights Protection Act passed Feb. 2014, <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=371032>. Fox News covered the bill <http://www.foxnews.com/us/2012/02/28/house-acts-against-high-court-on-eminent-domain/> as did the Daily Show who brought up the KXL exemption <http://thedailyshow.cc.com/videos/ulknas/little-seizers>.

⁴ Domina Law Group Eminent Domain Memo, <http://www.dominalaw.com/documents/Green-Paper.pdf>.

Attachment 8.4



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

September 17, 2012

TO: Nebraska Department of Environmental Quality

RE: Response to TransCanada's Supplemental Environmental Report (SER) September 5, 2012

A representative group of our District's constituents attended our monthly Board Meeting on September 10, 2012. They expressed their personal concerns about the SER. In particular, in response to the proposed Northern Alternative rerouting of the Keystone XL Pipeline: (1) Sand and porous soils are still being crossed, (2) poisonous coal tar crude oil should not cross the Ogallala Aquifer because any release of will contaminate their immediate area, water supply and land, (3) Why can't the Keystone XL Pipeline be routed parallel to the existing Keystone 1 Pipeline, which is at the easterly edge of the Ogallala Aquifer and sandy soils. They then expressed their appreciation for the District's proactive participation in the proposed pipeline review process.

The Board then challenged the constituents to continue their personal involvement in the process with the goal of protecting their interests as well as Nebraska's most precious natural resource – the High Plains Aquifer System and in particular the underlying Ogallala Aquifer. The Board suggested the constituents could consider writing to and/or meeting with the Nebraska Department of Environmental Quality Staff, Nebraska Legislature and the Nebraska Governor.

The LNNRD Board of Directors re-affirms our reasons for opposing the TransCanada Keystone XL Pipeline as set forth in our letter to NDEQ on May 31, 2012 (attached).

There continues to be enormous interest and competition among oil and natural gas companies to construct new pipelines for conveying both Canada's and the United State's developing crude oil supplies to refineries and ports in the United States and also redistribute petroleum products and natural gas across the United States as markets for demand change.

Oil companies have in the past and will continue in the future to construct new pipelines parallel to existing pipeline corridors (for example the Rockies Express, Platte System, Enbridge, Flanagan South, Pony Express and...) Why? Because the review process for the new pipelines in existing pipeline corridors/right-of-ways is not as rigorous and often subject to less scrutiny. In addition, in most locations other than the heartland of America (including across the mid-section of Nebraska) there is limited land available for new pipelines. The engineering challenges of paralleling existing pipelines have been overcome with improved construction methods and pipeline design. It is also worthy to recognize that as markets for crude and refined oil products and natural gas change the existing pipeline for conveying them are modified to transport crude oil or refined petroleum products instead of natural gas, and vice versa. Therefore, the proposed Keystone XL Pipeline for Canadian tar sands crude may in the future convey another product. In addition TransCanada may sell space in the Keystone XL Pipeline corridor to other oil companies for their new pipeline. Landowners may find in the future, more than one pipeline and types of products being conveyed across their private land easement.

TransCanada will resist to the very end of the process and until Nebraska's decision makers give TransCanada no other choice but to route the Keystone XL Pipeline parallel to and in the same corridor as the existing Keystone 1 Pipeline.

It is very obvious in the SER that TransCanada did not clearly and concisely answer Nebraska Department of Environmental Quality's very specific request in their Feedback Report, Chapter 7, information requested from Keystone, Paragraph 7.5.1, Additional Information Needs Arising From Public Comments on Page 37. Perhaps the most frequently asked question was: "Why didn't Keystone follow the same corridor as its first Keystone Oil Pipeline? Keystone should provide a clear and concise explanation of why the alternative was rejected. Keystone did not follow NDEQ's instructions.

In closing, the LNNRD Board expresses sincere thanks to the Nebraska Department of Environmental Quality Staff for an excellent Feedback Report.

Sincerely,
LNNRD Board of Directors

Attachment: 1



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

May 31, 2012

The LNNRD Board has been unanimously opposed to routing the Keystone XL Pipeline across the Nebraska Sandhills and underlying Ogallala Aquifer since the beginning of the public review process. In the 1980's, NRD's were directed by the Nebraska Legislature to develop Groundwater Management Plans to protect the quality and quantity of groundwater, which is most often described as Nebraska's "most precious natural resource". The Board takes very seriously the protection of these two natural resources which are absolutely essential to Nebraska's present and future agri-business, recreational pursuits, industrial and commercial growth, and municipal/local drinking water supplies in this region. The newly proposed Trans Canada Keystone XL Pipeline route still crosses large areas of Valentine Soils and the Ogallala Aquifer.

Concerns for the Ogallala Aquifer are being pushed aside now that the proposed new route, on paper, avoids the Sandhills. The Board maintains their objections to the re-routing and considers the aquifer just as important to avoid as the Sandhills. The Board also recognizes many pipelines crisscross the aquifer and areas with sandy soils now, but adding the contamination risks associated with tar sands crude to this region of the Ogallala Aquifer and the sandy soil pastures and croplands is not warranted.

The LNNRD Board objects to being forced to accept TransCanada's goal of building the shortest and cheapest pipeline at the risk of detrimental effects to our citizens, private land owners and the water resource they depend on for their livelihoods. A better route for the XL pipeline needs to be chosen!

The Board feels the best route across Nebraska is parallel to the existing Keystone Pipeline. Even though this route may be somewhat longer, the savings accrued from eliminating unknowns and surprises by building in a previously studied and completed ROW are significant. The same emergency response plans, materials, and personnel can be used for both pipelines and additional savings will accrue from co-locating maintenance crew facilities, material storage lots, and sites for pumping stations and storage tanks. There will be significantly less driving to and from points on the pipelines via rural roads.

Across the states of Montana, North Dakota, and South Dakota the proposed route avoids crossing Indian Reservations, wildlife refuges, and environmentally sensitive areas. In Nebraska, the TransCanada proposed route for the XL Pipeline crosses areas that are very sensitive to us: the Ogallala Aquifer and the Sandhills. Nebraskans will be stuck with the consequences of a crude oil pipeline located there. These resources are absolutely critical to Nebraska's jobs and economy, now and in the future. Land owners and producers in Nebraska are frustrated that their concerns continue to fall on deaf ears.

The LNNRD Board of Directors encourages the Nebraska Department of Environmental Quality to declare that the Trans Canada Keystone XL Pipeline newly proposed route does not meet the common good and welfare of the state and will present unacceptable hazards to Nebraska's most precious natural resource, agricultural resources, aesthetics and communities in this region. The LNNRD Board of Directors strongly and unanimously agrees that the most sensible routing alternative, as well as, the quickest alternative for getting on with building the TransCanada XL Pipeline across Nebraska is simply to avoid crossing this region of the Ogallala Aquifer and the Sandhills and locating it parallel and adjacent to the existing Keystone Pipeline.

Sincerely

Lower Niobrara Natural Resources District Board of Directors (unanimously approved 6-4-2012)

Attachment 8.5

A number of complementary leak detection methods and systems would be available within the OCC and would be linked to the SCADA system. Remote monitoring would consist primarily of monitoring pressure and flow data received from pump stations and valve sites that would be fed back to the OCC by the SCADA system. Software based volume balance systems would monitor receipt and delivery volumes and would detect leaks down to approximately 5 percent of pipeline flow rate. Computational Pipeline Monitoring or model based leak detection systems would monitor small pipeline segments on a mass balance basis. These systems would detect leaks down to approximately 1.5 to 2 percent of pipeline flow rate. Computer based, non-real-time, accumulated gain/loss volume trending would assist in identifying seepage releases below the 1.5 to 2 percent by volume detection thresholds. If any of the software-based leak detection methods indicate that a predetermined loss threshold has been exceeded, an alarm would be sent through SCADA and the Controller would take corrective action. The SCADA system would continuously poll all data on the proposed pipeline at an interval of approximately 5 seconds.

In the event of a leak, the operator would shut down operating pumping units and close the isolation valves. It would take approximately 9 minutes to complete the emergency shut-down procedure (shut down operating pumping units) and an additional 3 minutes to close the isolation valves. Some commenters have expressed concern that the Ludden spill on the existing Keystone Oil Pipeline Project (see Table 3.13.1-4) took longer than 12 minutes to shut down. In the case of the May 7, 2011 Ludden spill, the time from 3:51 to 4:26 pm MST was used to verify flow imbalance trends detected by the SCADA system. At 4:26 pm the Keystone Oil Control Center (OCC) received visual verification of a leak from a local farmer, thus confirming that a leak had occurred and system shutdown was immediately initiated. Shutdown was completed by 4:35 pm MST. The elapsed time from leak confirmation through visual verification to complete system shutdown was 9 minutes. The incident emphasizes the importance and difficulty of leak verification in some instances. The incident confirms that the uncertainty in time to shut down for any leak is primarily a function of the time required to verify that a leak has occurred.

In addition to the SCADA and complimentary leak detection systems, direct observation methods including aerial patrols, intermittent maintenance patrols, and public and landowner awareness programs would be implemented to encourage and facilitate the reporting of suspected leaks and events that could suggest a threat to the integrity of the pipeline.

EPA expressed concern that relying solely on pressure drops and aerial surveys to detect leaks may result in smaller leaks going undetected for some time, resulting in potentially large spill volumes. In light of those concerns, EPA requested consideration of additional measures to reduce the risks of undetected leaks. A PHMSA report (2007) addressed the state of leak detection technology and its applicability to pipeline leak detection. External leak detection technology addressed included liquid sensing cables, fiber optic cables, vapor sensing, and acoustic emissions. In that report PHMSA concludes that while external leak detection systems have proven results for underground storage tank systems there are limitations to their applicability to pipeline systems and they are better suited to shorter pipeline segments. Their performance even in limited application is affected by soil conditions, depth to water table, sensor spacing, and leak rate. While it is acknowledged that some external detection methods are more sensitive to small leaks than the SCADA computational approach, the costs are extremely high and the stability and robustness of the systems are highly variable. Therefore, long-term reliability is not assured and the efficacy of these systems for a 1,384-mile long pipeline is questionable.

Relative to additional ground patrols, Keystone responded to a data request from DOS concerning the feasibility of more ground-level inspections. Keystone responded that based on land owner concerns, additional ground-level inspections are not feasible due to potential disruption of normal land use activities (e.g., farming, animal grazing). However, it should be noted that in the normal course of maintenance Keystone would have crews at various places along the proposed Project corridor (e.g.,

Attachment 8.6

Leak Prevention and Detection



Operations Control Center

TransCanada's Keystone XL Pipeline will be remotely controlled from an Operations Control Center where highly trained pipeline controllers monitor the operation of the pipeline and provide 24-hour pipeline monitoring 365 days a year. The pipeline controllers ensure that the pipeline is running safely and efficiently. The control center includes an operational control system, a leak detection system, and a satellite communication network.

Remote control of the pipeline uses a computer case system known as Supervisory Control and Data Acquisition (SCADA) to monitor and control the pipeline system. Data from all sites is read and sent to the Control Center approximately every five seconds.

The SCADA system will include:

- Redundant, fully functional back-up computers and a second control center in case there is a failure in the main control center.
- Automatic functions that will not allow the pressure at any station or anywhere in the pipe to exceed safe values.
- Local safety limits at pump stations that will provide pipeline pressure protection if SCADA communications are interrupted.

In addition to the SCADA system, the pipeline will feature complimentary and overlapping leak detection methods and systems, including:

1. **Remote Monitoring:** Operators at the Operations Control Center monitor, on their computer screens, all of the pressure and flow data received from pump stations and valve sites. Remote monitoring is typically able to detect large leaks immediately so the line can be shutdown and all valves closed, to limit the size of the spill.
2. **Software-based Volume Balance Systems:** This system compares the injection and delivery volumes and provides alarm to the pipeline controller when there is a difference between what is input to the pipe and what is delivered.
3. **Computational Pipeline Monitoring:** The approach, also known as model-based leak detection, uses all the pipeline pressures and flow rates to calculate flow balances on smaller sections of the pipe. This system uses the SCADA data to create a sensitive leak detection model. TransCanada selected leak detection model will be capable of detecting leaks down to a level of approximately 1.5 per-cent - 2 per-cent of pipeline flow rate. In addition, TransCanada will employ an over/short calculation to identify leaks below this threshold.

4. **Direct Observation:** TransCanada will also utilize aerial patrols, conducted 26 times per year—approximately every other week—as well as public and landowner awareness programs designed to encourage and facilitate the reporting of suspected leaks and events that may suggest a threat to the integrity of the pipeline.

Overall, the Keystone XL Pipeline will employ industry best practices and materials to prevent leaks and to detect them if they do occur, so that appropriate actions may be taken. Our number one priority continues to be employee and public safety through all our activities.

Contact Us

For more information, please contact us:

Project Hot Line: 1.866.717.7473
Email: keystone@transcanada.com
Project web page: www.transcanada.com/keystone

Alternatively, you can write to us with attention to:

Keystone XL Pipeline
450 – 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

Or

Keystone XL Pipeline
2700 Post Oak Blvd., Suite 400
Houston, TX 77056

1. Introduction

In response to specific concerns raised by the State of Nebraska, TransCanada Keystone Pipeline LP (Keystone) has agreed to reroute its proposed Keystone XL Pipeline Project to avoid the Sandhills region in Nebraska (Nebraska Reroute). This report, which is being provided to the Nebraska Department of Environmental Quality (NDEQ), presents an initial analysis of alternative pipeline corridors that avoid the Sandhills. Each of the "corridors" discussed in this report represents a 2,000-foot-wide area. The statistics presented and maps provided represent the centerline of these 2,000-foot-wide corridors.

KXL Project Overview

The Keystone XL Pipeline Project (hereinafter referred to as the "Keystone XL Project" or the "Project") is a proposed approximate 854-mile, 36-inch diameter pipeline to transport crude oil from Hardisty, Alberta, Canada to Steele City, Nebraska. From That point, the project will connect with the existing Keystone Pipeline Cushing Extension. At the terminus of the Cushing Extension, the oil will be delivered into a new 36-inch pipeline to be constructed as the Keystone Pipeline Gulf Coast Project for transportation to refinery markets in the Gulf Coast area of the United States. The Project will have an initial nominal throughput capacity of 700,000 barrels per day (bpd) and can be expanded to an ultimate nominal capacity of 830,000 bpd through the installation of additional pumping capacity.

Background and Reroute Report Purpose

In September 2008, Keystone filed an application with the U.S. Department of State (DOS) for a Presidential Permit authorizing the construction and operation of the proposed Keystone XL Pipeline Project at the U.S.-Canada border crossing location in Montana. At that time, the proposed project consisted of a 2,232-mile, 36-inch diameter pipeline and appurtenant facilities to transport crude oil from Hardisty, Alberta, Canada to Nederland/Port Arthur, Texas. Upon receipt of that application, DOS led a comprehensive environmental review of all aspects of the original Keystone XL Project. The environmental review culminated August 26, 2011 with the release of the Final Environmental Impact Statement (FEIS) for the project. This review was the most detailed and comprehensive environmental review ever undertaken for a cross border crude oil pipeline. The FEIS concluded that "[t]he analysis of potential impacts associated with construction and normal operation of the proposed Project suggest that there would be no significant impacts to most resources along the proposed Project corridor..." (FEIS at p.3.15-1).

In November 2011, the DOS determined that, in order to make the required National Interest Determination with respect to the original Keystone XL Pipeline Project, it was necessary to conduct an in-depth assessment of potential alternative routes that would avoid the Sandhills region in Nebraska. Pursuant to authorization provided in Nebraska statute LB 4 – as adopted in the Special Legislative Session of November 2011 – the NDEQ also commenced leading the effort to assess alternative routes through Nebraska. The NDEQ also commenced negotiation of a Memorandum of Understanding with DOS, as provided for in LB – 4, in order to collaborate with DOS in the preparation of a Supplemental Environmental Impact Statement. Subsequently, the NDEQ hired a contractor to assist with the route review and published a map delineating the "Sandhills" region that any alternative route must avoid.

In late December 2011, Congress included a provision in the Payroll Tax Cut Extension Act requiring the President to make a decision on the Presidential Permit within 60 days. This Congressional action caused the State Department to suspend its work on an MOU with the NDEQ for the reroute process. This caused the NDEQ to suspend its work with respect to review of alternative routes in the State. In January 2012, the DOS announced its determination that the project – as presented and analyzed at that time – did not serve the national interest. The determination was based not on the merits of the project, but on

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000 barrels	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

700,000 x 42 = 29,400,000 gallons 1.5% = 441,000 gallons
leaking a day

against water 1.5% 8LBS 50 we

used that figure for weight

1.5% 700,000 capacity

- 441,000 gallons

8LBS per gallon

3,528,000 = weight

3,528,000

2%

588,000

x 8

4,704,000

4,704,000

94.08

each 52mi tanker truck 3,528,000

830,000 capacity at 2% leak

34,860,000

x 8

278,880,000 pounds

50,000

111.5 52mi. tank trucks

Attachment 8.8

Bonny

Nebraska Earthquakes

April 1867 ~~ January 2016

April 24, 1867 ~ Lawrence KS, but felt across much of Nebraska

Nov. 15, 1877 ~ Probably the strongest earthquake in Nebraska history. There were two shocks 45 minutes apart; the second was the strongest. At North Platte, the shock had intensity VII effects, buildings rocked at Lincoln, and walls were damaged at Columbus. The quake was felt across most of Nebraska and portions of Iowa, Kansas, the Dakotas, and northwestern Missouri.

July 28, 1902 ~ Intensity V earthquake occurred near Battle Creek in northeastern Nebraska. The tremor was reported sufficient to rattle dishes and shake bell towers at several points.

Feb 26, 1910 ~ Several small earthquakes shook house (IV-V) in Columbus.

July 30, 1934 ~ Dawes County ~ Chadron ~ Nebraska Panhandle

March 1, 1935 ~ Two earthquakes, 4 minutes apart shook the area near Tecumseh.

April 14, 1961 ~ Beaver City ~ South-central Nebraska

March 28, 1964 ~ 5.1 earthquake in Western Nebraska; causing many cracks in a road 10 miles south of Merriman; steep banks along the Niobrara River tumbled (Intensity VII); plaster fell at Rushville; part of a chimney toppled at Alliance. The quake occurred one day after the disastrous Alaska quake.

Nov.23, 1967 ~ Quake reportedly lasting more than two minutes shakes windows, rattles dishes in north-central Nebraska and south-central South Dakota.

Nov. 9, 1968 ~ Lincoln feels slight effects of a 5.5 magnitude quake centered in southern Illinois.

Oct. 15, 1972 ~ 3.7 magnitude (Intensity V) earthquake in Bassett; also felt in Ainsworth and Newport.

May 13, 1975 ~ 3.5 magnitude 27KM ~ Bartlett and in Holt County ~ Deloit Township 3.5 magnitude 10KM

May 7, 1978 ~ 3.8 magnitude earthquake in Hyannis; quake shook the oak pews and brick building of All Saints Church.

April 8, 1979 ~ 2.8 magnitude earthquake in St. Paul ~ 22KM

June 30, 1979 ~ 3.3 magnitude earthquake in Fairbury ~ 16KM

Oct. 9, 1981 ~ 3.3 magnitude earthquake in St. Paul ~ 8KM

June 3, 1982 ~ 2.24 magnitude earthquake is centered about four miles northeast of Wymore.

Nov. 14, 1982 ~ 4.3 magnitude quake reported along the eastern end of the Nebraska-South Dakota border; Public's reaction ~ thought it was a big explosion ~ near the Gavins Point Hatchery near the dam, windows actually trembled and you could see them move.

Jan. 1, 1987 ~ 3-3.5 magnitude quake centered at Crawford

June 10, 1987 ~ 5 magnitude earthquake centered in Illinois, is felt in Omaha as Press box atop Ak-Sar-Ben grandstand sways

Feb 9, 1989 ~ 4 magnitude quake shakes houses and beds in Cherry County.

July 18, 1990 ~ 3.0 magnitude quake centered near Ord ~ 10KM; rattles dishes and shakes houses.

March 30, 1993 ~ 2.9 magnitude quake centered near Peru; shakes buildings at Peru State College and is felt as far south as Fall City.

Jan. 24, 1994 ~ 3.3 magnitude quake centered 15 miles northwest of Ainsworth; just a week after a disastrous Los Angeles earthquake.

Feb. 6, 1996 ~ 3.6 magnitude quake centered around Bloomfield/Creighton ~ 12KM

Aug. 9, 1997 ~ earthquake at Clarkson in east-central Nebraska

Aug. 19, 1997 ~ 3.4 magnitude quake in Stanton ~ 17KM

Nov. 13, 2001 ~ 3.3 magnitude quake in Cambridge in southwest Nebraska ~ 31KM ~ centered on the NE-KS border between McCook and Oberlin KS.

June 20, 2002 ~ 3.5 magnitude quake was centered near Greeley, 20 miles east of Ord; Reviewed by seismologist and Public report of 16.

Nov. 4, 2002 ~ 4.3 magnitude with 5KM depth ~ quake hits northeast Nebraska in the Saratoga Township NNW of O'Neill and cracking walls, rattling windows and knocking down shelves in Butte (Boyd Co.) ~ U.S. Ecology says it has taken earthquakes into consideration during planning for a proposed nuclear waste dump in Boyd County. The dump was never built.

Feb 14, 2003 ~ 3.3 magnitude quake in Arapahoe ~ 12KM

May 26, 2003 ~ 4.4 magnitude quake shakes parts of western South Dakota and northwestern Nebraska ~ centered about 30 miles northeast of Pine Ridge.

July 16, 2004 ~ 3.3 magnitude quake is centered about 20 miles southeast of Auburn. Tremors felt from Auburn to Brownville and Nemaha and as far north as central Sarpy County. ~

Dec. 17, 2005 ~ 2.5 magnitude with 5.00KM depth quake hits near Newport in northern Rock County.

Feb. 2, 2006 ~ 2.9 magnitude quake (6KM) felt in north-central Nebraska, it was centered 30 miles east of Ainsworth; felt in Bassett. Reviewed by seismologist.

Sept. 7, 2006 ~ 2.6 magnitude quake ~ Gordon NE ~ 19KM ~ Reviewed by seismologist.

April 4, 2007 ~ 2.7 magnitude quake ~ Chadron NE ~ 27KM ~ Reviewed by seismologist.

April 16, 2007 ~ 3.0 magnitude quake ~ Hayes Center ~ 25KM ~ Reviewed by seismologist and public report of 12.

Dec. 16, 2009 ~ 3.5 magnitude quake centered northwest of Auburn is felt throughout Southeast Nebraska.

March 20, 2010 ~ 2.7 magnitude quake ~ 9KM ~ Springview ~ (KeyaPaha Co.) ~ Reviewed by seismologist and public report of 16.

Sept. 2010 ~ 3.0 magnitude quake ~ Oconto NE

Sept. 26, 2010 ~ 3.1 magnitude quake ~ Cozad ~ 27KM ~ Reviewed by seismologist and public reports of 170.

Nov. 18, 2010 ~ 3.3 magnitude quake ~ Schuyler ~ 11KM ~ Reviewed by seismologist and public reports of 128.

March 10, 2011 ~ 2.9 magnitude quake ~ Harrison ~ 25KM ~ Reviewed by seismologist and public reports of 24.

Nov. 14, 2011 ~ 4.0 magnitude quake ~ Chadron ~ 41KM ~ Reviewed by seismologist and public reports of 84.

Nov. 19, 2011 ~ 2.8 magnitude quake ~ Chadron ~ 11KM ~ Reviewed by seismologist.

Aug. 6, 2012 ~ 2.5 magnitude quake ~ Mullen ~ 21KM ~ Reviewed by seismologist and public report of 6.

Oct. 18, 2012 ~ 3.6 magnitude quake ~ Hyannis ~ 28KM ~ Reviewed by seismologist and public report of 50.

Jan. 14, 2014 ~ 2.9 magnitude quake ~ Wymore ~ 10KM ~ Reviewed by seismologist and public report of 40.

June 18, 2015 ~ 3.3 magnitude quake ~ Valentine ~ 15KM ~ Reviewed by seismologist and public report of 8.

Aug. 19, 2015 ~ 3.6 magnitude quake ~ Thedford ~ 34KM ~ Reviewed by seismologist and public report of 18.

Nov. 10, 2015 ~ 3.2 magnitude quake ~ Mullen ~ 52KM ~ Reviewed by seismologist and public report of 2.

Jan. 4, 2016 ~ 3.5 magnitude quake ~ Broken Bow ~ 16KM ~ Reviewed by seismologist and public report of 42.

Attachment 8.9

I am Bonny Kilmurry, an individual intervener on Docket HP14-001, hearing scheduled for July 27 through August 4, 2015. This is my written formal intervener statement. Thank you for allowing me the opportunity to participate in this process.

TransCanada is not the good neighbor it purports to be. Not only does TransCanada exaggerates it's job numbers,¹ the company also has a long history of spreading half-truths about the efficacy and safety of their exiting pipelines and the proposed Keystone XL pipeline.² As a landowner who is affected by the proposed Keystone XL pipeline, I have a financial and emotional interest in the fate of this proposed pipeline; however, what began as gut response is now based on factual research. I can now say, that TransCanada actions are not neighborly, and their actions speak to a blatant disregard of the land and water I seek to preserve.

¹ *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

² *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

TransCanada exaggerates pipeline safety. Let's look TransCanada's record for the first Keystone pipeline. The company boasted that this project would only have one leak in a seven-year period; however, in its first year of operation twelve were reported.³ In one such leak, a six-story geyser unleashed 21,000 barrels of oils in North Dakota.⁴ Furthermore, there are numerous issues with the southern leg of Keystone I. In one such instance, "a mandatory inspection test revealed a section of the pipeline's wall had corroded 95%, leaving it paper-thin in one area (one-third the thickness of a dime) and dangerously thin in three other places, leading TransCanada to immediately shut it down."⁵ The public was never notified of these issues. TransCanada claims to have speedily dealt with these issues, but I think this is more of a symptom of their lack of neighborliness. If the pipeline was so safe, then why would it leak twelve times in its first

³ Lacy, Stephen. *Climate Progress*. "After 12 Oil Spills in One Year, TransCanada Says Proposed Keystone XL Pipeline Will Be Safest in U.S." August 17, 2011.

<http://thinkprogress.org/climate/2011/08/17/297576/oil-spills-transcanada-keystone-xl-pipeline/>

⁴ O'Connor, Phillip. *St. Louis Post-Dispatch*, "Keystone oil pipeline shut down after leak." May 10, 2011.

http://www.stltoday.com/news/local/metro/article_dae7b66ee0c5-5677-9acd-0773efb0d8d1.html

⁵ Dermansky, Julie. *Desmog*. "Exclusive TransCanada Keystone 1 Pipeline Suffered Major Corrosion Only Two Years In Operation, 95% Worn in One Spot," April 30, 2015.

<http://www.desmogblog.com/2015/04/30/exclusive-transcanada-keystone-1-pipeline-suffered-major-corrosion-only-two-years-operation-95-worn-one-section>

year? If the pipeline was so sturdy, why would TransCanada need to replace major portions of the route in the pipeline's first year of operation?

I also believe that TransCanada has a corporate culture that flouts regulations in favor of profit. Evan Vokes, a former engineer for the company, made a formal complaint about TransCanada's non-compliance of regulations to Canada's National Energy Board (NEB) in 2012. From this formal complaint, the NEB found that "...many of the allegations of regulatory non-compliance identified by the Complainant were verified by TransCanada's internal audit."⁶ By 2014, TransCanada had dealt with their welding issues, however, these problems were only solved after the formal complaint was filed with the NEB.⁷ Prior to contacting the NEB, Vokes had voiced his concern within internal channels at TransCanada. These complaints were simply ignored. This story is not isolated. In March of this year, another individual brought "...a dozen allegations that deal with the

⁶ CBC News. "Whistleblower Forced Investigation of TransCanada Pipelines," October 17, 2012.
<http://www.cbc.ca/news/canada/whistleblower-forced-investigation-of-transcanada-pipelines-1.1146204>

⁷ CBC News. "TransCanada Whistleblower's Complaints Validated by the NEB," February 25, 2015.
<http://www.cbc.ca/news/canada/edmonton/transcanada-whistleblower-s-complaints-validated-by-neb-1.2550175>

timeliness, quality and reporting of repairs on [TransCanada's] Alberta pipelines" to Canada's NEB.⁸ These allegations are currently under investigation.

I am happy to hear that TransCanada dealt with its prior regulatory allegations; however, it concerns me that TransCanada only dealt with these issues after they were under investigation by the NEB. These instances are not neighborly. The company knows the regulations, and they have a duty to comply. Since these instances are far from isolated, I am concerned that this trend of ignoring regulations will persist with the Keystone XL pipeline.

I am also concerned with TransCanada's treatment of the landowners. Lori Collins from Paris, Texas welcomed TransCanada when the company wanted to place the southern leg of the Keystone XL pipeline across her land.⁹ The men in her family are all oil field worker, and she

⁸ *Canadian Manufacturing*. "NEB Launches New Investigation Into TransCanada Pipeline," March 20, 2015.
<http://www.canadianmanufacturing.com/manufacturing/neb-launches-new-investigation-into-transcanadas-pipelines-146415/>

⁹ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014.
<http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

strongly supported the pipeline construction. In 2012, during construction of the pipeline on their land, a backhoe dug up the Collins' septic system. Collins was not concerned because the TransCanada land agent assured her that the company would promptly fix the problem. This did not happen. Instead their house was filled with raw sewage, and the family had to move. A year and a half after this incident the company offered the family \$40,000 to fix the damage, only to backtrack their offer. Finally, nineteen months after the septic destruction, TransCanada settled with the Collins family out of court for \$479,000. The former TransCanada supporter was exhausted, and in an interview with the Texas Observer, Collins said, "... they sucked us dry. They took our home, our livelihood, our work from us."¹⁰

From the construction issues of the first Keystone pipeline, to their regulatory issues in Canada, I see a troubling trend. These examples show that TransCanada is far from neighborly. As a life-long resident of the Sandhills and landowner along the Keystone XL pipeline, I have a vested

¹⁰ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014. Web <http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

SD PUC Commissioners
HP14-001 Hearing
July 24, 2015

interests in your Commission's decision. As an informed citizen, I am concerned. I see a company that values profits over the livelihoods of South Dakota's citizens. I ask that your Commission takes these facts into consideration, and I thank you for the opportunity to present my findings to you.

Regards,

Bonny Kilmurry

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Atkinson, Nebraska 68713

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402.925.5538

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline, LP
for Route Approval of Keystone XL
Pipeline Project, Pursuant to *Major Oil
Pipeline Siting Act***

Application No: OP-003

**Direct Testimony of
Bonny J. Kilmurry in Support of
Landowner Intervenors**

State of Nebraska)
) ss.
Holt County)

Q: Please state your name.

A: My name is Bonny J. Kilmurry

Q: Are you an intervener in the Public Service Commission's proceedings regarding TransCanada's application for approval of its proposed Keystone XL tar sands pipeline across Nebraska?

A: Yes, I am.

Q: Do you own land in Nebraska, either directly or through an entity of which you are an owner that could be affected by the proposed TransCanada Keystone XL pipeline?

A: Yes, I do and it is located in Holt County.

Q: Is Attachment No. 1 to this sworn statement copies of true and accurate aerial photo(s) of your land in question here with the area of the proposed KXL pipeline depicted?

A: Yes.

Q: What do you do for a living?

EXHIBIT

30

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A: Ranching.

Q: If you are you married tell us your spouse's name please?

A: Richard Kilmurry.

Q: If you have children how many do you have?

A: We have 4 children.

Q: If you have grandchildren how many do you have?

A: We have 3 grandchildren, 2 step grandchildren.

Q: Is Attachment No. 2 to this sworn statement a copy(ies) of picture(s) of you and or your family?

A: Yes.

Q: How long the land has been in your family?

A: Nearly 100 years. Some land has been in Kilmurry family since 1918. Even as a boy Frank Kilmurry did chores. Unlike his father Frank decided against farming and chose ranching. As Frank first started-the drought of the 30's and the dust bowl didn't make this easy. Life had some struggles as money was tight. He married Rosemary Troshynski in 1943. Rosemary taught school for 5 years. Frank Kilmurry's lived on section 33, township 32, range 14 and raised their family. Frank bred Hereford cattle later changed to Angus/Hereford cross. The 7 children attended Celia school and into Atkinson for high school. Kilmurrys were active 4-H members, enjoyed horses, bird watching and gardening. They spent many hours during summer haying and enjoyed fishing. Frank and Rosemary enjoyed visits from relatives and friends, they especially enjoyed 23 grandkids and great grandkids visits. I joined this family in 1976. Richard and I delight in visits from our children and the grandkids.

Q: Do you earn any income from this land?

A: Yes.

Q: Have you depended on the income from your land to support your livelihood or the livelihood of your family?

A: Yes. Importance of this land-so many memories because we too raised our kids on the same acres. Rich with 'first' memories. With each improvement our goal was to add value, never diminish the land value. We added wells, fences and dams, by taking care of the ground we rest assured the land will sustain us and our heirs.

Q: Have you ever in the past or have you thought about in the future leasing all or a portion of your land in question here?

A: Yes, I have thought of it and that concerns me. I am concerned that a prospective tenant may try to negotiate a lower price for my land if it had the pipeline on it and all the restrictions and risks and potential negative impacts to farming or ranching operations as opposed to land that did not have those same risks. If I was looking to lease or rent ground I would pay more for comparable non-pipeline land than I would for comparable pipeline land and I think most folks would think the same way. This is another negative economic impact that affects the landowner and the county and the state and will forever and ever should TransCanada's preferred or mainline alternative routes be approved. If they were to twin or closely parallel to Keystone I the vast majority of landowners would be those that already have a pipeline so there would be considerable less new incremental negative impacts.

Q: Do you have similar concerns about selling the land?

A: Well I hope not to have to sell the land in my lifetime but times change and you never know what is around the corner and yes I am concerned that if another piece of ground similar to mine were for sale and it did not have the pipeline and mine did that I would have a lower selling price. I think this would be true for pipeline ground on both the preferred and mainline alternative routes.

Q: What is your intent with your land after you die?

A: Like I said I hope not to have to sell and I hope that it stays in the family for years to come but I have thought about getting out if this pipeline were to come through.

Q: Are you aware that the preferred route of TransCanada's Keystone XL Pipeline would cross the land described above and owned by you?

A: Yes.

Q: Were you or an entity for which you are a member, shareholder, or director previously sued by TransCanada Keystone Pipeline, LP?

A: Yes, we were in 2015. TransCanada Keystone Pipeline LP sued us by filing a petition for condemnation against our land so it could place its proposed pipeline within an easement that it wanted to take from us on our land.

Q: Did you defend yourself and your land in that condemnation action?

A: Yes, we did. We hired lawyers to defend and protect us and we incurred legal fees and expenses in our resistance of TransCanada's lawsuit against us.

Q: Has TransCanada reimbursed you for any of your expenses or costs for fees incurred?

A: No, they have not.

Q: In its lawsuit against you, did TransCanada identify the amount of your property that it wanted to take for its proposed pipeline?

A: The lawsuit against us stated they would take the amount of property that is reasonably necessary to lay, relay, operate, and maintain the pipeline and the plant and equipment reasonably necessary to operate the pipeline.

Q: Did TransCanada define what they meant by "property that is reasonably necessary"?

A: No, they did not.

Q: Did TransCanada in its lawsuit against you, identify the eminent domain property portion of your land?

A: Yes, they did.

Q: Did TransCanada describe what rights it proposed to take related to the eminent domain property on your land?

A: Yes, they did.

Q: What rights that they proposed to take did they describe?

A: TransCanada stated that the eminent domain property will be used to "lay, relay, operate, and maintain the pipeline and the plant and equipment reasonably necessary to operate the pipeline, specifically including surveying, laying,

constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning one pipeline, together with all fittings, cathodic protection equipment, pipeline markers, and all their equipment and appurtenances thereto, for the transportation of oil, natural gas, hydrocarbon, petroleum products, and all by-products thereof.”

Q: Prior to filing an eminent domain lawsuit to take your land that TransCanada identified, do you believe they attempted to negotiate in good faith with you?

A: No, I do not.

Q: Did TransCanada at any time approach you with or deliver to you their proposed easement and right-of-way agreement?

A: Yes, they did.

Q: At the time you reviewed TransCanada’s easement and right-of-way agreement, did you understand that they would be purchasing a fee title interest in your property or that they were taking something else?

A: I understood that they proposed to have the power to take both a temporary construction easement that could last for a certain period of time and then also a permanent easement which they described to be 50 feet across or in width, and that would run the entire portion of my property from where a proposed pipeline would enter my property until where it would exit the property.

Q: Is the document included with your testimony here as Attachment No. 3, a true and accurate copy of TransCanada’s proposed Easement and Right-of-Way agreement that they included with their condemnation lawsuit against you?

A: Yes, it is.

Q: Have you had an opportunity to review TransCanada’s proposed Easement and Right-of-Way agreement?

A: Yes, I have.

Q: What is your understanding of the significance of the Easement and Right-of-Way agreement as proposed by TransCanada?

A: My understanding is that this is the document that will govern all of the rights and obligations and duties as well as the limitations of what I can and cannot do and how I and any future landowner and any person I invite to come onto my property must behave as well as what TransCanada is and is not responsible for and how they can use my land.

Q: After reviewing TransCanada's proposed Easement and Right-of-Way agreement do you have any concerns about any portions of it or any of the language either included in the document or missing from the proposed document?

A: Yes, I have a number of significant concerns and worries about the document and how the language included and the language not included potentially negatively impacts my land and thereby potentially negatively impacts my community and my state.

Q: I would like you to walk the Commissioners through each and every one of your concerns about TransCanada's proposed Easement and Right-of-Way agreement so they can develop an understanding of how that language and the terms of that contract, in your opinion, potentially negatively impacts you and your land. So, if you can start at the beginning of that document and let's work our way through it, okay?

A: Yes, I'll be happy to express my concerns about TransCanada's proposed Easement and Right-of-Way agreement and how it negatively could affect my property rights and my economic interests.

Q: Okay, let's start with your first concern please.

A: The very first sentence talks about consideration or how much money they will pay to compensate me for all of the known and unknown affects and all of the rights I am giving up and for all the things they get to do to my land and for what

they will prevent me from doing on my land and they only will pay me one time at the signing of the easement agreement. That is a huge problem.

Q: Explain to the Commissioners why that is a problem.

A: It is not fair to the landowner, the county, or the State. It is not fair to the landowner because they want to have my land forever for use as they see fit so they can make a daily profit from their customers. If I was to lease ground from my neighbor I would typically pay twice a year every year as long as they granted me the rights to use their land. That only makes sense – that is fair. If I was going to rent a house in town I would typically pay monthly, every month until I gave up my right to use that house. By TransCanada getting out on the cheap and paying once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax revenue collection on the money I would be paid and then pay taxes on and contribute to this state and this country. It is money I would be putting back into my local community both spending and stimulating the local economy and generating more economic activity right here. Instead TransCanada's shareholders keep all that money and it never finds its way to Nebraska.

Q: What is your next concern?

A: The first paragraph goes on to say Grantor, which is me the landowner, "does hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited partnership..." and I have no idea who that really is. I have no idea who is forcing this pipeline on us or who the owners of the entities are, or what are the assets backing this limited partnership, or who the general partner is, or who all the limited partners are, and who makes up the ownership of the these partners or the structure or any of the basic things you would want to know and understand if you would want to do business with such an outfit. According to TransCanada's answer to our Interrogatory No. 28, as of the date I signed this testimony, a limited liability company called TransCanada Keystone Pipeline GP, LLC is the general partner and it only owns 0.02 percent of TransCanada Keystone Pipeline, LP so

basically nothing. That is really scary since the general partner has the liability but virtually none of the ownership and who knows if it has any other assets.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who could become the owner of over 275 miles of Nebraska land?

A: No.

Q: Do you think it is in the public interest of Nebraska to not be one-hundred percent clear on exactly who will be operating and responsible for approximately 275 miles of tar sands pipeline underneath and through Nebraska land?

A: No.

Q: Okay, let's continue please with your concerns of the impacts upon your land and the State of Nebraska of TransCanada's easement terms.

A: Yes, so the next sentence talks about "...its successors and assigns (hereinafter called "Grantee")..." and this concerns me because it would allow my easement to be transferred or sold to someone or some company or country or who knows what that I don't know and who we may not want to do business with. This pipeline would be a huge asset for TransCanada and if they can sell to the highest bidder that could have terrible impacts upon all of Nebraska depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing our State is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: What's next?

A: Then it says "...a perpetual permanent easement and right-of-way..." and this really concerns me. Why does the easement and right-of-way have to be perpetual

and permanent? That is the question myself and my family want an answer to. Perpetual to me is like forever and that doesn't make sense.

Q: Why doesn't a perpetual Easement and Right-of-Way make sense to you?

A: For many reasons but mostly because the tar sands are finite. I am unaware of any data proving there is a perpetual supply of tar sands. I am not aware in TransCanada's application where it proves there is a perpetual necessity for this pipeline. My understanding of energy infrastructure like wind towers is they have a decommission plan and actually take the towers down when they become obsolete or no longer needed. Nothing manmade lasts forever. My land however will, and I want my family or future Nebraska families to have that land as undisturbed as possible and it is not in my interest or the public interest of Nebraska to be forced to give up perpetual and permanent rights in the land for this specific kind of pipeline project.

Q: Okay, what is your next concern?

A: The easement language includes all these things TransCanada can do and it says "...abandoning in place..." so they can just leave this pipeline under my ground until the end of time just sitting there while they are not using it, but I am still prevented from doing on my land and using my land what I would like. If I owned a gas station I couldn't just leave my underground oil or fuel storage tanks sitting there. It doesn't make sense and it scares me and it is not in my interest or the public interest of Nebraska to allow this.

Q: Now it looks like we are ready to go to the second page of the Easement is that right?

A: Yes.

Q: So now on the second page of the Easement what are your concerns?

A: Here the Easement identifies a 24-month deadline to complete construction of the pipeline but has caveats that are undefined and ambiguous. The 24-month period starts to run from the moment "actual pipeline installation activities" begin on Landowners property. It appears that TransCanada would define this phrase as

needed. It would be wise to explain what types of TransCanada action constitutes “installation activity” For instance, would the placement and storage of an excavator or other equipment on or near the Easement property be an activity or would earth have to be moved before the activity requirement is triggered. This vague phrase is likely to lead to future disputes and litigation that is not in the best interest of the welfare of Nebraska and would not protect property interests. The 24-months can also be extended in the case of “force majeure.” My understanding is that force majeure is often used to insulate a party to a contract when events occur that are completely out of their control. In TransCanada’s easement this is expanded to include “without limitation...availability of labor and materials.” Extending this language to labor and materials is problematic because these are two variables that TransCanada does have some or significant control over and to allow extension of the 24-month period over events not truly out of the control of TransCanada and without further provision for compensation for the Landowner is not conducive to protection of property rights.

Q: Okay, what is your next concern?

A: Paragraphs 1.A. and 1.B. deal with the liabilities and responsibilities of TransCanada and Landowner. In 1.A., the first sentence discusses “commercially reasonable costs and expenses” will pay for damages caused but then limits TransCanada’s liability to certain circumstances. There is no definition of “commercially reasonable” and no stated right that the Landowner would get to determine the amounts of cost or expense that is “commercially reasonable.” TransCanada excepts out from their liability any damages that are caused by Landowner’s negligence or the negligence of anyone ever acting on the behalf of Landowner. It is understandable that if the Landowner were to willfully and intentionally cause damages to the pipeline that Landowner should be liable. However, anything short of willful misconduct should be the liability of TransCanada who is subjecting the pipeline on the Landowner and who is making a daily profit from that pipeline. When evaluating the impact on property rights of

this provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of Nebraska for landowners to be treated that way.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015 lawsuit filed against Nemaha County, Nebraska landowner farmers who accidentally struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4.**

Q: What is your next concern with the Easement language?

A: Paragraph 3 states that Landowner can farm on and otherwise use their property as they choose unless 1) any Landowner use interferes in any way with TransCanada's exercise of any of its rights within the Easement, or 2) TransCanada decides to take any action on the property it deems necessary to prevent injury, endangerment or interference with anything TransCanada deems necessary to do on the property. Landowner is also forbidden from excavating without prior authorization by TransCanada. So my understanding is that TransCanada will unilaterally determine what Landowner can and can't do based upon how TransCanada chooses to define the terms in paragraph 3. TransCanada could also completely deny my request to excavate. Further, TransCanada retains all "privileges necessary or convenient for the full use of the rights" granted to them in the Easement. Again, TransCanada unilaterally can decide to the detriment of the property rights of Landowner what TransCanada believes is

necessary or convenient for it. And there is no option for any additional compensation to landowner for any right exercised by TransCanada that leads to the removal of trees or plants or vegetation or buildings or structures or facilities owned by Landowner of any kind. Such undefined and unilateral restrictions and rights without having to compensate Landowner for such further destruction or losses are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have?

A: The Easement also allows some rights for Landowner but restricts them at the same time and again at the sole and unilateral decision making of TransCanada. TransCanada will determine if the actions of Landowner might in anyway endanger or obstruct or interfere with TransCanada's full use of the Easement or any appurtenances thereon to the pipeline itself or to their access to the Easement or within the Easement and TransCanada retains the right at any time, whether during growing season or not, to travel "within and along Easement Area on foot or in vehicle or machinery..." Further at TransCanada's sole discretion it will retain the rights to prevent any landowner activity that it thinks may "unreasonably impair[ed] or interfere[ed] with" TransCanada's use of the Easement Area. Such undefined and unilateral restrictions are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada sole discretion to burn or chip or bury under Landowner's land any debris of any kind without any input or power of Landowner to demand an alternative method or location of debris disposal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: Again, undefined terms leave a lot of room for confusion. What does the phrase "where rock is encountered" mean and why does TransCanada solely get to determine whether or not this phrase is triggered. This phrase could be used to

justify installing the pipeline 24 inches beneath the surface. The ability to use this provision to minimal locate the pipeline at a depth of 24 inches could negatively affect Landowners property are not conducive to the protection of property rights. A shallow pipeline is much more likely to become a danger and liability in the future given farming operations and buried irrigation lines and other factors common to the current typical agricultural uses of the land in question impacted by TransCanada's preferred pipeline route.

Q: What is the next concern you have with the Easement language?

A: There are more vague concepts solely at the determination of TransCanada such as "as nearly as practicable" and "pre-construction position" and "extent reasonably possible." There is nothing here that defines this or provides a mechanism for documenting or memorializing "pre-construction position" so as to minimize costly legal battles or wasted Landowner time attempting to recreate the soil condition on their fields or pasture. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada maintains the unilateral right to abandon the pipeline and all appurtenances thereto in place on, under, across, or through Nebraska land at any time it chooses. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interest.

Q: What is the next concern you have with the Easement language?

A: TransCanada has the power to unilaterally move or modify the location of any Easement area whether permanent or temporary at their sole discretion. Regardless, if Landowner has taken prior steps relative to their property in preparation or planning of TransCanada's taking of the initial easement area(s), the language here does not require TransCanada to compensate the Landowner if

they decide to move the easement anywhere on Landowners property. Such unilateral powers would negatively affect Landowners property are not conducive to the protection of property rights or economic interests.

Q: What is the next concern you have with the Easement language?

A: The Easement requires that all of the burdens and restrictions upon Landowner to transfer and be applicable to any future owner of the Land in question without the ability of the future Landowner to modify or negotiate any of the language in question to which it will be held to comply.

Q: What is the next concern you have with the Easement language?

A: The Easement allows TransCanada to assign, transfer, or sell any part of the Easement to any person, company, country, etc. at their sole discretion at anytime to anyone. This also means that any buyer of the easement could do the same to a third buyer and so on forever. There is no change of control or sale provision in place to protect the Landowner or Nebraska or to provide compensation for such change of control or ownership. It is not conducive to the protection of property rights or economic interests to allow unilateral unrestricted sale of the Easement thereby forcing upon the Landowner and our State a new unknown Easement owner.

Q: What is the next concern you have with the Easement language?

A: There are many terms in the Easement that are either confusing or undefined terms that are without context as to whether or not the Landowner would have any say so in determining what these terms mean or if the evaluation is solely in TransCanada's control. Some of these vague undefined terms are as follows:

- i. "pipeline installation activities"
- ii. "availability of labor and materials"
- iii. "commercially reasonable costs and expenses"
- iv. "reasonably anticipated and foreseeable costs and expenses"
- v. "yield loss damages"
- vi. "diminution in the value of the property"

- vii. “substantially same condition”
- viii. “an actual or potential hazard”
- ix. “efficient”
- x. “convenient”
- xi. “endangered”
- xii. “obstructed”
- xiii. “injured”
- xiv. “interfered with”
- xv. “impaired”
- xvi. “suitable crossings”
- xvii. “where rock is encountered”
- xviii. “as nearly as practicable”
- xix. “pre-construction position”
- xx. “pre-construction grade”
- xxi. “various engineering factors”

Each one of these above terms and phrases as read in the context of the Easement could be problematic in many ways. Notably, undefined terms tend to only get definition in further legal proceedings after a dispute arises and the way the Easement is drafted, TransCanada has sole power to determine when and if a particular situation conforms with or triggers rights affected by these terms. For instance, “yield loss damages” should be specifically defined and spelled out exactly how the landowner is to be compensated and in what events on the front end. I can’t afford to fight over this after the damage has occurred. Unfortunately, the Landowner is without contractual rights to define these terms or determine when rights related to them trigger and what the affects may be.

Q: Do you have any other concerns about the Easement language that you can think of at this time?

A: I reserve the right to discuss any additional concerns that I think of at the time of my live testimony in August.

Q: Based upon what you have shared with the Commission above regarding TransCanada's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: Did TransCanada ever offer you financial compensation for the rights that they sought to obtain in your land, and for what they sought to prevent you and any future land owner of your property from doing in the future?

A: Yes, we received an offer from them.

Q: As the owner of the land in question and as the person who knows it better than anyone else, do you believe that TransCanada offered you just, or fair, compensation for all of what they proposed to take from you so that their tar sands pipeline could be located across your property?

A: No, I do not. Not at any time has TransCanada, in my opinion, made a fair or just offer for all the potential impacts and effects and the rights that I'm giving up, and what we will be prevented from doing in the future and how their pipeline would impact my property for ever and ever.

Q: Has TransCanada at any time offered to compensate you annually, such as wind farm projects do, for the existence of their potential tar sands pipeline across your property.

A: No, never.

Q: At any time did TransCanada present you with or request that you, as the owner of the land in question, sign and execute a document called, "Advanced Release of Damage Claims and Indemnity Agreement?"

A: Yes, they did and it was included in the County Court lawsuit against us.

Q: Is Attachment No. 5, to your testimony here, a true and accurate copy of the "Advanced Release of Damage Claims and Indemnity Agreement?"

A: Yes, it is.

Q: What was your understanding of that document?

A: When I read that document in the plain language of that document, it was my understanding that TransCanada was attempting to pay me a very small amount at that time in order for me to agree to give up my rights to be compensated from them in the future related to any damage or impact they may have upon my property “arising out of, in connection with, or alleged to resulted from construction or surveying over, under or on” my land.

Q: Did you ever sign that document?

A: No, I did not.

Q: Why not?

A: Because I do not believe that it is fair or just to try to get me to agree to a small sum of money when I have no idea how bad the impacts or damages that they, or their contractors, or subcontractors, or other agents or employees, may cause on my land at any time in the future that resulted from the construction or surveying or their activities upon my land.

Q: When you reviewed this document, what did it make you feel?

A: I felt like it was simply another attempt for TransCanada to try to pay very little to shield themselves against known and foreseeable impacts that their pipeline, and the construction of it, would have upon my land. It made me feel that they knew it was in their financial interest to pay me as little as possible to prevent me from ever having the opportunity to seek fair compensation again, and that this must be based upon their experience of unhappy landowners and situations in other places where they have built pipelines.

Q: Has TransCanada ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in your best interest?

A: No, they have not.

Q: Has TransCanada ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in the public interest of the State of Nebraska?

A: No, they have not.

Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the Takings Clause?

A: Yes, I am.

Q: What is your understanding of the Fifth Amendment as it relates to taking of an American citizens property?

A: My understanding is that, according to the United States Constitution, that if the government is going to take land for public use, then in that case, or by taking for public use, it can only occur if the private land owner is compensated justly, or fairly.

Q: Has TransCanada ever contacted you specially to explain the way in which the public could use its proposed Keystone XL Pipeline?

A: No, they have not.

Q: Can you think of any way in which the public, that is the citizens of the State of Nebraska, can directly use the proposed TransCanada Keystone XL Pipeline, as it dissects the State of Nebraska?

A: No, I cannot. I cannot think of any way to use this pipeline. I do not see how the public benefits from this pipeline in any way, how they can use it any way, or how it's in the public interest in any way. By looking at the map, it is quite clear to me that the only reason it's proposed to come through Nebraska, is that because we are geographically in the way from between where the privately-owned Tar Sands are located to where TransCanada wants to ship the Tar Sands to refineries in Houston, Texas.

Q: Has TransCanada ever contacted you and asked you if you had any tar sands, crude petroleum, or oil and petroleum by-products that you would like to ship in its pipeline?

A: No, it has not.

Q: Do you have any tar sands, crude petroleum, or oil and petroleum by-products that you, at this time or any time in the future, would desire to place for transport within the proposed TransCanada Keystone XL Pipeline?

A: No, I do not.

Q: Do you know anyone in the state of Nebraska who would be able to ship any Nebraska-based tar sands, crude petroleum, or oil and petroleum by-products within the proposed TransCanada Keystone XL Pipeline?

A: No, I do not. I've never heard of such a person or company like that.

Q: Do you pay property taxes for the land that would be affected and impacted at the proposed TransCanada Keystone XL Pipeline?

A: Yes, I do.

Q: Why do you pay property taxes on that land?

A: Because that is the law. The law requires us to pay the property taxes as the owner of that property.

Q: Because you follow the law and pay property taxes, do you believe you deserve any special consideration or treatment apart from any other person or company that pays property taxes?

A: Well no, of course not. It's the law to pay property taxes if you own property. It's just what you do.

Q: Do you believe the fact that you pay property taxes entitles you to special treatment of any kind, or special rights of any kind?

A: No, of course not.

Q: Do you believe the fact that you pay property taxes on your land would be enough to qualify you to have the power of eminent domain to take land of your neighbors or other people in your county, or other people across the state of Nebraska?

A: Well, of course not. Like I said, paying property taxes is the law, it's nothing that I expect an award for or any type of special consideration.

Q: Have you at any time ever employed any person other than yourself?

A: Well, yes I have.

Q: Do you believe that the fact that you have, at some point in your life, employed one or more other persons entitle you to any special treatment or consideration above and beyond any other Nebraskan that has also employed one or more persons?

A: No, of course not.

Q: Do you believe that the fact that you, as a Nebraska land owner and taxpayer have at one point employed another person within this state, entitles you to preferential treatment or consideration of any kind?

A: No, of course not. If I choose to employ someone that decision is up to me. I don't deserve any special treatment or consideration for that fact.

Q: At the beginning of your statement, you briefly described your property that would be impacted by the potential Keystone XL Pipeline. I would like you to give the Commissioners a sense of specifically how you believe the proposed Keystone XL Pipeline and its preferred route, which proposes to go across your land, how it would in your opinion based on your knowledge, experience, and background of your land, affect it.

A: Our property is sandy, porous soil with very little top soil, highly erodible and difficult to mend once top soils are disturbed-exactly why the route 'moved' from the Sand Hills. We are the Sand Hills-the shrunk map is false. These soils are extremely difficult to restore once disturbed. This ground will take years if ever to return to pre pipeline condition. The Ogallala Aquifer sits very near the ground surface. As TransCanada in beds its 36" pipeline in our soil, the pipe will be directly in the high water table. I believe the water will choose a new path and flow following the pipe, thus changing sub irrigated meadows. Changing hay production. Our wells could easily be contaminated, its water refreshes both people and livestock-a food source. Our garden is watered from same source too. Benzene, a component to help tar sands flow is water soluble and cannot be seen,

smelled and has no taste—yet deadly. Our water isn't filtered - directly from aquifer to our glasses. How can I be reassured that its safe to offer to my family, neighbors etc.? The water is very important, without it the land is less productive.

Q: Do you have any concerns TransCanada's fitness as an applicant for a major crude oil pipeline in its preferred location, or ultimate location across the state of Nebraska?

A: Yes, I have significant concerns. I am aware of landowners being treated unfairly or even bullied around and being made to feel scared that they did not have any options but to sign whatever papers TransCanada told them they had to. I am aware of folks being threatened that their land would be taken if they didn't follow what TransCanada was saying. I am aware of tactics to get people to sign easements that I don't believe have any place in Nebraska or anywhere such as TransCanada or some outfit associated with it hiring a pastor or priest to pray with landowners and convince them they should sign TransCanada's easement agreements. I am aware of older folks and widows or widowers feeling they had no choice but to sign TransCanada's Easement and they didn't know they could fight or stand up for themselves. From a more practical standpoint, I am worried that according to their answer to our Interrogatory No. 211, TransCanada only owns and operates one (1) major oil pipeline. They simply do not have the experience with this type of pipeline and that scares me. There are others but that is what I can recollect at this time and if I remember more or my recollection is refreshed I will share those with the Commissioners at the Hearing in August.

Q: Do you believe TransCanada's proposed method of compensation to you as a landowner is reasonable or just?

A: No, I do not.

Q: Do you have any concern about limitations that the construction of this proposed pipeline across your affected land would prevent construction of future structures upon the portion of your land affected by the proposed easement and immediately surrounding areas?

A: Well yes, of course I do. We would not be able to build many, if any, types of structures directly across or touching the easement, and it would be unwise and I would be uncomfortable to build anything near the easement for fear of being blamed in the future should any damage or difficulty result on my property in regards to the pipeline.

Q: Do you think such a restriction would impact you economically?

A: Well yes, of course.

Q: How do you think such a restriction would impact you economically?

A: The future of this land may not be exactly how it's being used as of this moment, and having the restrictions and limiting my ability to develop my land in certain ways presents a huge negative economic impact on myself, my family, and any potential future owner of the property. You have no idea how I or the future owner may want to use this land in the future or the other land across Nebraska potentially affected by the proposed Keystone XL tar sands pipeline. Fifty years ago it would have been hard to imagine all the advances that we have now or how things change. Because the Easement is forever and TransCanada gets the rights in my land forever we have to think with a very long term view. By placing their pipeline on under across and through my land that prevents future development which greatly negatively impacts future taxes and tax revenue that could have been generated by the County and State but now will not. When you look at the short blip of economic activity that the two years of temporary construction efforts may bring, that is far outweighed by the perpetual and forever loss of opportunity and restrictions TransCanada is forcing upon us and Nebraska.

Q: Do you have any concerns about the environmental impact of the proposed pipeline?

A: Yes, I do.

Q: What are some of those concerns?

A: As an affected land owner and Nebraskan, I am concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have

a detrimental impact upon the environment of my land specifically, as well as the lands near my land and surrounding the proposed pipeline route.

Q: Do you have any other environmental concerns?

A: Yes, of course I am concerned about potential breaches of the pipeline, failures in construction and/or maintenance and operation. I am concerned about spills and leaks that TransCanada has had in the past and will have in the future. This could be catastrophic to my operations or others and to my county and the State.

Q: Do you have any thoughts regarding if there would be an impact upon the natural resources on or near your property due to the proposed pipeline?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impacts upon the natural resources of my land, and the lands near and surrounding the proposed pipeline route.

Q: Do you have any worries about potential impacts from the proposed pipeline to the soil of your land, or land near you?

A: Yes, I believe that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the soil of land, as well as land along and surrounding the proposed pipeline route. This includes, but is not limited to, the reasons that we discussed above of disturbing the soil composition and makeup as it has naturally existed for thousands and millions of years during the construction process, and any future maintenance or removal process. I'm gravely concerned about the fertility and the loss of economic ability of my property to grow the crops, or grow the grasses, or grow whatever it is at that time they exist on my property or that I may want to grow in the future, or that a future owner may want to grow. The land will never be the same from as it exists now undisturbed to after it is trenched up for the proposed pipeline.

Q: Do you have any concerns about the potential impact of the proposed pipeline upon the groundwater over your land, or surrounding lands?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the groundwater of not only under my land, but also near and surrounding the pipeline route, and in fact, potentially the entire State of Nebraska. Water is life plain and simple and it is simply too valuable to our State and the country to put at unreasonable risk.

Q: Do you have any concern about the potential impact of the proposed pipeline upon the surface water on, or near or around your land?

A: Yes, I have significant concerns that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have detrimental impact upon the surface water of not only within my property boundary, but along and near and surrounding the pipeline route, and in fact, across the state of Nebraska.

Q: Do you have any concern about the potential impacts of the proposed pipeline upon the wildlife and plants, other than your growing crops on or near your land?

A: Yes, I'm very concerned that any construction, operation, and/or maintenance of the proposed Keystone XL Pipeline would have a detrimental impact upon the wildlife and the plants, not only that are located on or can be found upon my land, but also near and along the proposed pipeline route.

Q: Do you have any concerns about the effects of the proposed pipeline upon the fair market value of your land?

A: Yes, I do. I am significantly concerned about how the existence of the proposed pipeline underneath and across and through my property will negatively affect the fair market value at any point in the future, especially at that point in which I would need to sell the property, or someone in my family would need to sell the property. I do not believe, and certainly would not be willing to pay, the same price for land that had the pipeline located on it, versus land that did not. I hope there is never a point where I'm in a position where I have to sell and have to

realize as much value as I can out of my land. But because it is my single largest asset, I'm gravely concerned that the existence of the proposed Keystone XL Pipeline upon my land will affect a buyer's willingness to pay as much as they would've paid and as much as I could've received, if the pipeline were not upon my property. There are just too many risks, unknowns, impacts and uncertainties, not to mention all of the rights you give up by the nature of having the pipeline due to having the easement that we have previously discussed, for any reasonable person to think that the existence of the pipeline would not negatively affect my property's value.

Q: Have you ever seen the document that's marked as Attachment No. 6, to your testimony?

A: Yes, I have.

Q: Where have you seen that before?

A: That is a map I think I first saw a couple years ago that shows the Keystone XL I-90 corridor alternate route of its proposed pipeline through Nebraska and I believe the portion of the alternative route in Nebraska essentially twins or parallels Keystone I.

Q: Do you believe that TransCanada's preferred route as found on page 5 of its Application, and as found on Attachment No. 7, here to your testimony, is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe that the Keystone mainline alternative route as shown on Attachment No. 7 included with your testimony here is a major oil pipeline route that is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe the portion of the proposed pipeline within Nebraska as found in Attachment No. 6 to your testimony, is in the public interest of Nebraska?

A: No, I do not.

Q: Do you believe there is any potential route for the proposed Keystone XL Pipeline across, within, under, or through the State of Nebraska that is in the public interest of the citizens of Nebraska?

A: No, I do not.

Q: Why do you hold that belief?

A: Because there simply is no public interest based on all of the factors that I am aware and that I have read and that I have studied that this Commission is to consider that would establish that a for-profit foreign-owned pipeline that simply crosses Nebraska because we are geographically in the way between where tar sands are in Canada to where it wants to ship it to in Texas could ever be in the public interest of Nebraskans. We derive no benefit from this project. It is not for public use. Nebraska is simply in the way and when all considerations are taken in there is no net benefit of any kind for Nebraska should this project be placed in our state. Even if there was some arguable “benefit” it is not enough to outweigh all the negative impacts and concerns.

Q: What do you think about the applicant, TransCanada’s argument that it’s preferred route for its proposed Keystone XL Pipeline is in the public interest of Nebraska because it may bring temporary jobs during the construction phase to Nebraska?

A: First of all, not all jobs are created equally. Most jobs that are created, whether temporary or on a permanent basis, don’t come with a project that has all the potential and foreseeable negative impacts, many of which we have discussed here and other witnesses throughout the course of this hearing have and will discuss. If I decide to hire and employ someone to help me out in my farming or ranching business, I’ve created a job but I haven’t done so at the risk or detrimental impact to my land or my town or my county or my state. And I’ve hired someone who is working directly for me, a Nebraska landowner, citizen, taxpayer, to help produce and grow a Nebraska product to be sold so that I can pay Nebraska taxes. So, all jobs are not created equal. Additionally, I understand from what I’m familiar with

from TransCanada's own statements that the jobs numbers they originally touted were determined to be a minute fraction of the permanent jobs that had been projected. According to their answer to our Interrogatory No. 191, TransCanada has created only thirty-four (34) jobs within Nebraska working specifically on behalf of TransCanada and according to their answer to Interrogatory No. 196, as of May 5, 2017 they only employ one (1) temporary working within Nebraska. Further, according to their answer to Interrogatory No. 199, TransCanada would only employ six to ten (6 to 10) new individuals if the proposed Keystone XL was constructed on its Preferred Route or its Mainline Alternative Route.

Q: Are you opposed to the preferred route of the proposed KXL Pipeline simply because it would cross your land?

A: No, absolutely not. I am opposed to this project because it is not in the public interest, neither within my community nor within our state.

Q: Would you be happier if instead of crossing your land, this proposed pipeline was to cross someone else's land?

A: No, absolutely not. I would get no joy in having a fellow citizen of my state have the fear and anxiety and potential foreseeable risks and negative impacts that this type of a project carrying this type of product brings foisted upon anyone in this state or any other state.

Q: Do you think there is any intelligent route for the proposed Keystone XL Pipeline to cross the state of Nebraska?

A: I don't believe there is an intelligent route because as I have stated I don't believe this project anywhere within Nebraska is within the public interest. However, if you are presenting a hypothetical that if this proposed KXL Pipeline absolutely had to go somewhere in the state of Nebraska, the only intelligent route I believe would be to twin or closely parallel the existing Keystone I Pipeline. Both the preferred route and the mainline alternative routes are economic liabilities our state cannot risk.

Q: What do you rely upon to make that statement?

A: Well, the fact that a pipeline owned and operated by TransCanada, Keystone I, already exists in that area is reason enough as it is not in our best interest or the public interests to have more major oil pipelines crisscrossing our state. Second, they have the infrastructure already there in terms of relationships with the counties and local officials and first responders along that route. Third, they have already obtained easements from all the landowners along that route and have relationships with them. Fourth, that route avoids our most sensitive soils, the sandier lighter soils. Fifth, that route for all practical purposes avoids the Ogallala Aquifer. Sixth, they have already studied that route and previously offered it as an alternative. Seventh, it just makes the most sense that as a state we would have some intelligent policy of energy corridors and co-locating this type of infrastructure near each other.

Q: **Do you have any other concerns you would like to reiterate or can think of at this time you would like the Commissioners to understand?**

A: Yes. Perpetual is a concern, no man-made pipeline will last forever, this is excessive taking. At end of pipeline life-it is TransCanada who has profited and is who needs to pay for its dismantling and disposal fees - Not landowners and not the taxpayers of Nebraska! As landowners we do not have sufficient equipment and/or the know how to safely dismantle the aging pipes. Is TransCanada required to be bonded for spills-since tar sands aren't required to add to spill fund tax? What if any agency insures the bond is in place and current? U.S. tax dollars shouldn't be used for clean-up. Nebraskans will not profit and only get the risks of spills in our ground and in our waterways as well as the Ogallala aquifer.

Q: **Have you fully expressed each and every opinion, concern, or fact you would like the Public Service Commissioners to consider in their review of TransCanada's Application?**

A: No, I have not. I have shared that which I can think of as of the date I signed this document below but other things may come to me or my memory may be refreshed and I will add and address those things at the time of the Hearing in

August and address any additional items at that time as is necessary. Additionally, I have not had an adequate amount of time to receive and review all of TransCanada's answers to our discovery and the discovery of others so it was impossible to competently and completely react to that in my testimony here and I reserve the right to also address anything related to discovery that has not yet concluded as of the date I signed this document below. Lastly, certain documents requested have not yet been produced by TransCanada and therefore I may have additional thoughts on those I will also share at the hearing as needed.

Q: What is it that you are requesting the Public Service Commissioners do in regards to TransCanada's application for the proposed Keystone XL Pipeline across Nebraska?

A: I am respectfully and humbly requesting that the Commissioners think far beyond a temporary job spike that this project may bring to a few counties and beyond the relatively small amount of taxes this proposed foreign pipeline would possibly generate. And, instead think about the perpetual and forever impacts of this pipeline as it would have on the landowners specifically, first and foremost, but also thereby upon the entire state of Nebraska, and to determine that neither the preferred route nor the Keystone mainline alternative route are in the public interest of the citizens of the state of Nebraska. And if the Commissioners were inclined to modify TransCanada's proposed routes and were to be inclined to grant an application for a route in Nebraska, that the only potential route that would make any intelligent sense whatsoever would be twinning or near paralleling of the proposed KXL with the existing Keystone I pipeline. It simply does not make sense to add yet another major oil pipeline crisscrossing our state creating new pumping stations, creating new impacts on additional counties and communities and going through all of the court processes with myself and other landowners like me when this applicant already has relationships with the landowners, the towns and the communities along Keystone I, and that Keystone I is firmly outside of the

sand hills and a significantly further portion away from the heart of the Ogallala Aquifer than the preferred route or the Keystone mainline alternative route.

Q: Does Attachment No. 8 here contain other documents you are competent to speak about that you wish to be part of your testimony and to discuss in more detail as needed at the August 2017 Hearing?

A: Yes.

Q: Are all of your statements in your testimony provided above true and accurate as of the date you signed this document to the best of your knowledge?

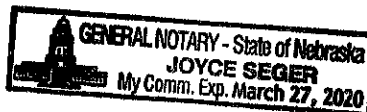
A: Yes, they are.

Q: Thank you, I have no further questions at this time and reserve the right to ask you additional questions at the August 2017 Hearing.

Bonny J. Kilmurry
Bonny J. Kilmurry

Subscribed and Sworn to me before this 31 day of May, 2017.

Joyce Seger
Notary Public



Attachment 8.1

U.S. Not Prepared for Tar Sands Oil Spills, National Study Finds

Report urges new regulations, research, and technology to respond to spills of diluted bitumen.



Photo courtesy Sam LaSusa

Oil gathers in a sheen near the banks of the Kalamazoo River more than a week after a spill of crude oil, including tar sands oil, from Enbridge Inc.'s Line 6B pipeline in 2010. It was the largest inland oil spill in U.S. history. *Click image to enlarge.*

By Codi Kozacek

Circle of Blue

Spills of heavy crude oil from western Canada's tar sands are more difficult to clean up than other types of conventional oil, particularly if the spill occurs in water, a new study by a [high-level committee](#) of experts found. Moreover, current regulations governing emergency response plans for oil spills in the United States are inadequate to address spills of tar sands oil.

[The study](#) by the U.S. National Academies of Sciences, Engineering, and Medicine confirmed what scientists, emergency responders, and conservationists knew anecdotally from a major oil spill that contaminated Michigan's Kalamazoo River in 2010 and another spill in Mayflower, Arkansas in 2013. Tar sands crude, called diluted bitumen, becomes denser and stickier than other types of oil after it spills from a pipeline, sinking to the bottom of rivers, lakes, and estuaries and coating vegetation instead of floating on top of the water.

"[Diluted bitumen] weathers to a denser material, and it's stickier, and that's a problem. It's a distinct problem that makes it different from other crude."

—Diane McKnight,

Chair

Committee on the Effects of Diluted Bitumen on the Environment

"The long-term risk associated with the weathered bitumen is the potential for that [oil] becoming submerged and sinking into water bodies where it gets into the sediments," Diane McKnight, chair of the committee that produced the study and a professor of engineering at the University of Colorado Boulder, told Circle of Blue. "And then those sediments can become resuspended and move further downstream and have consequences not only at the ecosystem level but also in terms of water supply."

“It weathers to a denser material, and it’s stickier, and that’s a problem. It’s a distinct problem that makes it different from other crude.” McKnight added. Weathering is what happens after oil is spilled and exposed to sunlight, water, and other elements. In order to flow through pipelines, tar sands crude oil is mixed with lighter oils, which evaporate during the weathering process. In a matter of days, what is left of the diluted bitumen can sink.

The study’s findings come amid an expansion in unconventional fuels development and transport in North America. Over the past decade, Canada became the world’s fifth largest crude oil producer by developing the Alberta tar sands. U.S. imports of Canadian crude, much of it from tar sands, [increased 58 percent](#) over the past decade, according to the U.S. Energy Information Administration.

Though oil prices are at a seven-year low, and market turbulence is expected to persist for several more years, tar sands developers are working to double the current tar sands oil production — around 2.2 million barrels per day — by 2030. [Pipelines to transport all of the new oil are expanding too](#), producing a greater risk of spills.

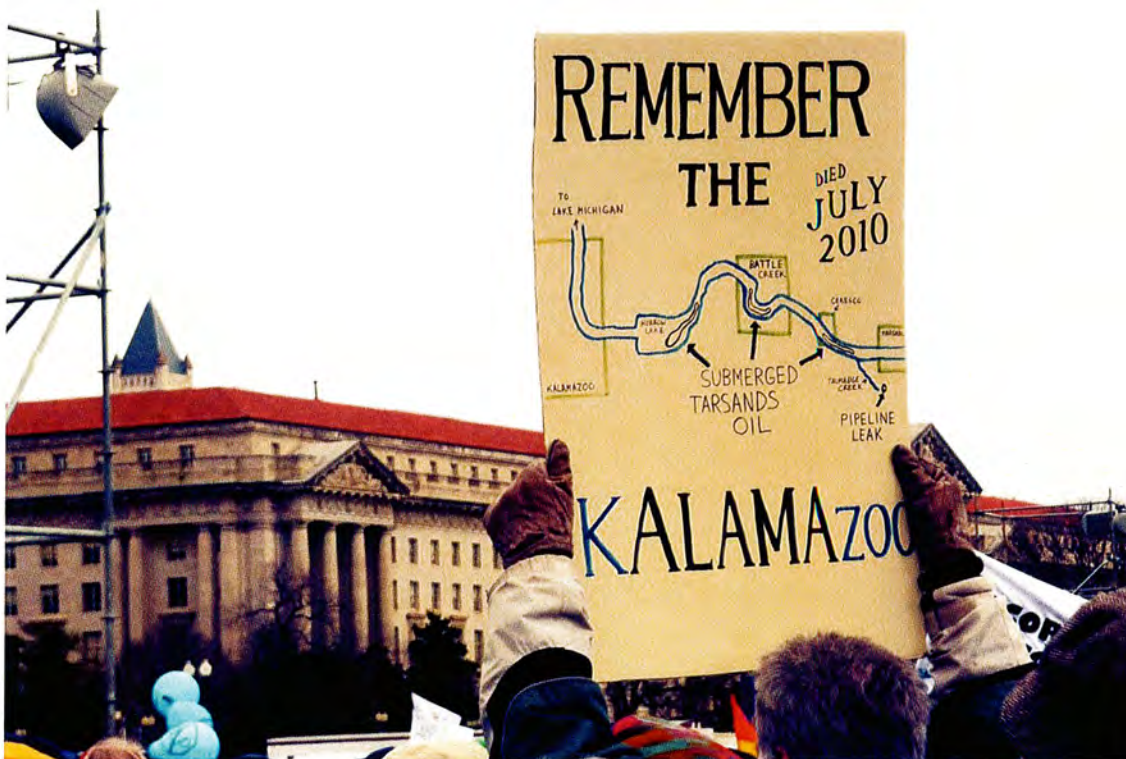


Photo courtesy DCErica via [Flickr Creative Commons](#)

A sign held by a protester at a 2013 climate rally in Washington, D.C. notes the lingering difficulties associated with spills of diluted bitumen –namely **that** the oil can become submerged in the water. *Click image to enlarge.*

Whether tar sands producers achieve that level of oil supply is not assured. Public pressure is mounting in Canada and the United States to rein in tar sands development due to considerable environmental damage and heavy carbon emissions. U.S. President Barack Obama last month scrapped the Keystone XL pipeline, an 800,000-barrel-per-day project to move crude oil from Canada's tar sands to Gulf of Mexico refineries. An international movement to divest from fossil fuels and a [legally binding global deal](#) to cut carbon emissions –if it is signed in Paris– could curb demand for tar sands oil.

The National Academies of Sciences, Engineering, and Medicine study adds new data to arguments made by critics of tar sands development.

“The study really confirms a lot of the information that has been out there, there are no real surprises,” Jim Murphy, senior counsel for the National Wildlife Federation, told Circle of Blue. “You don’t want these things to be affirmed because it’s **bad** news for communities. But the good part about a study like this is hopefully it will prompt some action. Some folks were hiding behind the lack of a study like this, saying we don’t really know. Those excuses have gone away.”

“The chief takeaway is that this is a different oil, it presents different challenges, and responders and regulators simply don’t have the structures in place to deal with the challenges,” he added.

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**–Jim Murphy,
Senior Counsel
National Wildlife Federation**

Nonetheless, energy companies are pursuing pipeline expansions, most notably in the Midwest and Great Lakes regions. Enbridge, Canada's largest transporter of crude oil, operates a 3,000-kilometer (1,900-mile) pipeline network, known as the Lakehead System, that carries crude oil from Canada to refineries on the Great Lakes. The Lakehead system, in concert with Enbridge's Canadian main line, is capable of transporting 2.62 million barrels of oil per day. The pipeline responsible for the 2010 oil spill in Kalamazoo was part of the Lakehead system. A link in the Lakehead system ruptured in 2010 and spilled more than 3 million liters (843,000 gallons) of tar sands oil [into southern Michigan's Kalamazoo River](#). It was the largest inland oil spill in U.S. history and its effects still linger because of oil that sank and is embedded in the river's sediments.

Enbridge is currently pursuing [upgrades to its Alberta Clipper pipeline](#), which runs through Minnesota and Wisconsin, in order to boost the line's capacity to 800,000 barrels per day from 450,000 barrels per day. A [second project](#) aims to increase the capacity of Line 61, a pipeline that runs from Wisconsin to Illinois, from 560,000 barrels per day to 1.2 million barrels per day. Opposition to the company's operation of a pipeline that runs beneath the Straits of Mackinac, where Lake Michigan and Lake Huron join, has been especially fierce, though the line does not currently carry tar sands oil.

"I think at the very least we should be saying no to more tar sands through the [Great Lakes] region until we get a firm handle on how to deal with the unique challenges that tar sands spills present," Murphy said. "We should also be taking a hard look, as the president did with the Keystone XL decision, about the other negative impacts of more tar sands oil, like the consequences in Alberta with the habitat destruction there, and also the higher carbon pollution content of the fuel."

The National Academies study concluded that the characteristics of diluted bitumen are "highly problematic for spill response because 1) there are few effective techniques for detection, containment, and recovery of oil that is submerged in the water column, and 2) available techniques for responding to oil that has sunken to the bottom have variable effectiveness depending on the spill conditions."

"Broadly, regulations and agency practices do not take the unique properties of diluted bitumen into account, nor do they encourage effective planning for spills of diluted bitumen," it continued.



Photo courtesy NWFblogs via [Flickr Creative Commons](#)

A tar ball recovered on the edge of a cove in Mayflower, Arkansas, after tar sands crude spilled from ExxonMobil's Pegasus pipeline in 2013. *Click image to enlarge.*

The study's authors made a series of recommendations to help reduce the damage from future tar sands spills, including:

- Update regulations that would require pipeline operators to identify and provide safety sheets for each crude oil transported by the pipeline, catalogue the areas and water bodies that would be most sensitive to a diluted bitumen spill, describe how they would detect and recover sunken oil, provide samples and information about the type of oil spilled to emergency officials, and publicly report the annual volumes and types of crude oil that pass through each pipeline.
- Require the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency that regulates pipelines in the United States, to review spill response

plans in coordination with the U.S. Environmental Protection Agency and U.S. Coast Guard to determine if the plans are capable of responding to diluted bitumen spills.

- Develop methods to detect, contain, and recover oil that sinks to the bottom of water bodies.
- Require government agencies at the federal, state, and local level to use industry-standard names for crude oils when planning spill responses.
- Revise oil classifications used by the U.S. Coast Guard to indicate that diluted bitumen can sink in water.
- Collect data to improve modeling of diluted bitumen oil spills.
- Improve coordination between federal agencies and state and local governments when planning and practicing oil spill response exercises.
- Develop a standard method for determining the adhesion –a measure of how sticky the oil is–of diluted bitumen in the event of a spill.

After the study's release, PHMSA said it would develop a bulletin advising pipeline operators about the recommendations and urge voluntary improvements to their spill response plans. The agency also plans to hold a workshop next spring to hear public input on how to implement the recommendations, coordinate with other federal organizations to “advance the recommendations”, and work with industry representatives to improve spill response planning.

“We appreciate the work the National Academy of Sciences has done over the last few years in analyzing the risks of transporting diluted bitumen, including its effects on transmission pipelines, the environment and oil spill response activities,” Artealia Gilliard, PHMSA spokesperson and director for governmental, international and public affairs, said in a statement. “All pipelines transporting crude oil or any other hazardous liquid are required to meet strict federal safety regulations that work to prevent pipeline failures and to mitigate the consequences of pipeline failures when they occur.”

Attachment 8.3

The Keystone XL Tar Sands Pipeline Will Hurt More than Help Job Creation

The total number of jobs the Keystone XL Pipeline would create is far lower than those touted by pipeline proponents. According to the State Department, the pipeline would create 35 permanent full-time jobs¹ and 1,950 construction jobs that would last for two years.² The recent claim that Keystone XL would create 42,000 jobs is based on theoretical estimates of all short-term, indirect effects of spending by the much smaller number of people who would be directly employed.

Keystone XL would likely have negative impacts on job creation. A spill would be detrimental to the agriculture industry and cleanup efforts would be costly. Keystone XL would also undermine the expansion of the clean energy sector, which has proven to be more effective at job creation than the fossil fuel industry.

A tar sands spill from Keystone XL would threaten jobs

In the event of a major pipeline spill, Keystone XL could cost thousands of jobs along its route and require high cleanup expenditures. A study from the University of Nebraska has found that Keystone XL would likely experience 91 major pipeline spills over the project's 50-year lifespan.³

Keystone XL would threaten the agricultural sector, which directly employs more than 500,000 people in the states the pipeline would traverse and which generates billions of dollars in revenue.⁴ 79 percent of the land that would be affected by Keystone XL is agricultural and rangeland.⁵ The pipeline would also run through the Ogallala Aquifer, which supplies 30 percent of the groundwater used for irrigation in the U.S.⁶ Cleaning up tar sands oil spills is both difficult and costly, as witnessed following spills into the Kalamazoo River and in Mayflower, Arkansas.

Keystone XL would impede the growth of the clean energy sector

Business owners have argued that Keystone XL would impose nearly \$100 billion in climate-related costs on the economy.⁷ In addition, Keystone XL would undermine the growth of the clean energy sector. The American Sustainable Business Council, representing more than 200,000 businesses across the country, has called on the administration to reject the pipeline.⁸

The clean energy sector is more conducive to job creation than Keystone XL would be. In the third quarter of last fiscal year, 18,000 new clean energy jobs were created nationwide.⁹ Investments in clean energy create four times as many jobs as the same amount of investment in petroleum-based projects.¹⁰

¹ U.S. State Department, Keystone XL Final SEIS, January 2014, p. 4.10-31.

² U.S. State Department, Keystone XL Final SEIS, January 2014, p. ES-19.

³ John Stansbury, *Analysis of Frequency, Magnitude and Consequence of Worst-Case Spills From the Proposed Keystone XL Pipeline*, Nebraska Water Center, 2011, <http://watercenter.unl.edu/downloads/2011-Worst-case-Keystone-spills-report.pdf>.

⁴ Lara Skinner & Sean Sweeney, *The Impact of Tar Sands Pipeline Spills on Employment and the Economy*, Cornell University Global Labor Institute, 2012, https://www.ilr.cornell.edu/globallaborinstitute/research/upload/GLI_Impact-of-Tar-Sands-Pipeline-Spills.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Environmental Entrepreneurs, *Letter to Secretary Kerry*, March 7, 2014, <http://switchboard.nrdc.org/blogs/aswift/E2%20Letter%20Opposing%20the%20Keystone%20XL%20Tar%20Sands%20Oil%20Pipeline.pdf>.

⁸ *Business Leaders Call on Senate to Reject Keystone Pipeline*, American Sustainable Business Council, November 18, 2014, <http://asbcouncil.org/news/press-release/business-leaders-call-senate-reject-keystone-pipeline#.VKwRumTF-BI>.

⁹ Environmental Entrepreneurs, *Clean Energy Works for Us: Q3 2014 Jobs Report*, 2014, http://cleaneconomyworksforus.org/wp-content/uploads/2014/11/2014_Q3_Report_final.pdf.

¹⁰ Robert Pollin et al., *Green Recovery: A Program to Create Good Jobs and Start Building a Low-Carbon Economy*, Political Economy Research Institute, 2008, http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/peri_report.pdf.

Marshall, Michigan Tar Sands Spill into Kalamazoo River - 2010

On July 26, 2010, a pipeline operated by Enbridge Inc. ruptured releasing 843,000 gallons of tar sands diluted bitumen into Talmadge Creek which flows into the Kalamazoo River near Marshall, Michigan. The tar sands spill eventually contaminated 35 miles of the Kalamazoo River.¹ The rupture of this pipeline (called line Line 6B) is the costliest inland oil spill cleanup in U.S. history. Significantly, this spill drew national attention to the fact that tar sands oil sinks in water (unlike conventional oil). Despite more than four years of cleanup efforts overseen by the U.S. Environmental Protection Agency, the Kalamazoo River is still contaminated with tar sands.²

1. **Most expensive inland oil spill in U.S. history:** To date, the cleanup cost has exceeded \$1 billion. Cleanup requires river-bottom dredging to remove the submerged tar sands that have remained since 2010. Even as this expensive and time-consuming process has taken place, there is evidence that dredging and other river-bottom removal techniques may also be leading to a wider spread of the spilled tar sands oil.³ Traditional oil spill clean tools used for conventional oil—like surface skimmers, vacuum trucks, and absorbent booms—are largely ineffective for tar sands because large quantities sink and become submerged oil.⁴
2. **Tar sands oil sinks:** The response and cleanup of the Kalamazoo river spill has confirmed longstanding concerns among scientists and environmental monitors that tar sands do not float like conventional oil if spilled in water.⁵ On the Kalamazoo, this has proved to be the case as the lighter, highly volatile diluting agents quickly evaporated, leaving behind the highly viscous, heavy bitumen, which sunk to the river bottom and has not significantly biodegraded over time. Even the State Department has acknowledged that a spill of tar sands presents different challenges than a conventional oil spill but failed to consider this in its environmental review.⁶
3. **Leak detection technology was ineffective:** The pipeline company operating Line 6B was not the first one to notice the rupture. Despite modern spill detection technology (similar to that proposed for Keystone XL), the rupture was reported by a member of the public 17 hours after the pipeline had ruptured.⁷

Following the spill, residents in the area reported adverse health effects including rashes, headaches, breathing problems and nausea.⁸ The Talmadge Creek ecosystem was also decimated, as wildlife including turtles, birds, mammals, fish and invertebrates were coated in oil and died.⁹

¹ EPA Response to Enbridge Spill in Michigan, updated October 16, 2014, <http://www.epa.gov/enbridgespill/>.

² *Ibid.*

³ Lisa Song, "Cleanup of 2010 Mich. Dilbit Spill Aims to Stop Spread of Submerged Oil," *Inside Climate News*, March 27, 2013, <http://insideclimatenews.org/news/20130327/cleanup-2010-mich-dilbit-spill-aims-stop-spread-submerged-oil>.

⁴ Kari Lydersen, "A Year After Pipeline Spill, Tar Sands Oil Still Plagues a Michigan Community," *On Earth*, July 25, 2011, <http://archive.oneyearth.org/article/tar-sands-oil-plagues-a-michigan-community>.

⁵ Lisa Song, "Dilbit Sinks in Enbridge Oil Spill, but Floats in Its Lab Study," *Inside Climate News*, March 14, 2013, <http://insideclimatenews.org/news/20130314/tar-sands-dilbit-sinks-enbridge-oil-spill-floats-its-lab-study>.

⁶ Final Supplemental Environmental Impact Statement for the Keystone XL Pipeline Project, Chapter 4, Potential Releases, <http://keystonepipeline-xl.state.gov/documents/organization/221189.pdf>.

⁷ Pipeline Accident Report, Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, National Transportation Safety Board, July 10, 2012, <https://www.nts.gov/investigations/summary/PAR1201.html>. Though the pipeline's leak detection system issued alarms consistent with a rupture, operators misinterpreted the alarms and continued to keep the pipeline open as it poured oil into the environment.

⁸ Keith Matheny, "Three years after oil spill, a slow recovery haunts Kalamazoo River," *Detroit Free Press*, June 24, 2013, <http://archive.freep.com/article/20130623/NEWS06/306230059/Kalamazoo-River-oil-spill>.

⁹ *Ibid.*

Mayflower, Arkansas Tar Sands Spill - 2013

On March 29, 2013, ExxonMobil's 95,000 barrel per day Pegasus Pipeline ruptured, sending roughly 5,000 barrels (210,000 gallons) of tar sands diluted bitumen through the community of Mayflower, Arkansas.¹ Some of the spilled tar sands crude flowed through people's yards and down their streets.² While some of the very closest homes to the spill were evacuated, many who lived just a few hundred yards from the spilled diluted bitumen were not – and were exposed to dangerous levels of benzene, along with other pollutants such as octane, cyclohexane, heptane, hexane, toluene, butane, pentane and more.³ Some community members experienced severe headaches, nausea, and respiratory infections following the spill.⁴ Even nearly a year later, residents still were facing headaches, dizziness, nausea and other health challenges – while being told it was safe to live there – so that some have abandoned their homes, unable to find buyers.⁵

The Pegasus pipeline runs from Patoka, Illinois through Missouri and Arkansas to Corsicana and Nederland, Texas.⁶ At the time of the spill, the pipeline was 65 years old, and had been built to transport lighter crudes at lower pressures in the opposite direction—but was reversed in 2006 to transport heavier tar sands diluted bitumen at higher pressures to the Gulf Coast.⁷ Until 2012, Exxon's 90,000 bpd Pegasus pipeline was the only pipeline to move Canadian diluted from the Midwest to the Gulf Coast.

Following the spill, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Corrective Action Order, requiring ExxonMobil to shut down the pipeline until certain conditions were met, and initiated an investigation of the spill. PHMSA found nine probable violations of safety rules that may have contributed to the spill, and ExxonMobil was fined nearly \$2.7 million.⁸ On March 31, 2014 – just over a year after the spill – PHMSA approved ExxonMobil's request to resume operations on the Pegasus Pipeline at a reduced pressure of 80% of the operating pressure at the time of the pipeline failure.⁹

As illustrated by the Mayflower spill and the 2010 tar sands spill into the Kalamazoo River, tar sands is risky to transport, and poses health risks and clean-up challenges when it does spill. Further, the pipeline companies are not doing their jobs to ensure that the communities through which they are transporting tar sands stay safe, and U.S. government regulation of tar sands transport is inadequate. Building more tar sands pipelines like Keystone XL and exacerbating these risks is the wrong path forward.

¹ PHMSA, ExxonMobil Pipeline Incident – Mayflower, Ark., <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=1a9ab5676d5cd310VgnVCM100000d2c97898RCRD&vgnnextchannel=d248724dd7d6c010VgnVCM10000080e8a8c0RCRD&vgnnextfmt=print>.

² Exxon Pipeline Breaks in Arkansas, YouTube, March 31, 2013, <https://www.youtube.com/watch?v=u30m8U6VP3E#t=12>.

³ Sam Bifling, Ark. Spill Victims on 'Wrong' Side of Fence Left to Fend for Themselves, August 7, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130807/ark-spill-victims-wrong-side-fence-left-fend-themselves>

⁴ Ibid.

⁵ RT, Exxon oil spill town 'deserted land', residents still getting sick, forced to abandon homes, February 11, 2014, <http://rt.com/usa/mayflower-keystone-oil-pipeline-410/>.

⁶ ExxonMobil Pipeline, Central North crude maps, http://www.exxonmobil.com/Images/EMPCo/central_north_crude2.pdf.

⁷ John H. Cushman, Jr., Federal Rules Don't Control Pipeline Reversals Like Exxon's Burst Pegasus, April 3, 2013, Inside Climate News, <http://insideclimatenews.org/news/20130403/federal-rules-dont-control-pipeline-reversals-exxons-burst-pegasus>.

⁸ Timothy Gardner and Alan Raybould, Exxon faces \$2.7 million fine for Arkansas pipeline spill, November 6, 2013, Reuters, <http://www.reuters.com/article/2013/11/07/us-usa-exxon-fine-idUSBRE9A603X20131107>.

⁹ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Letter to ExxonMobil Pipeline Company, Re: CFP No. 4-2013-5006H, Approval of Restart Plan, Southern Segment of the Pegasus Pipeline, March 31, 2014,

http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_325C1FBC0A971C60C2DC5268CB2676A341960000/filename/420135006H_Approval_of_Restart_Plan_Southern_Segment_REV6_03312014.pdf.

Nebraska and South Dakota State Processes Currently Under Way Regarding the Proposed Keystone XL Tar Sands Pipeline

Nebraska

The U.S. State Department's review of the Keystone XL pipeline has been suspended, awaiting a decision by the Nebraska Supreme Court. Pending the court's ruling, which could come any Friday in 2015, **there is no approved route for the pipeline through Nebraska.**

The case, *Thompson v. Heineman*,¹ hinges on whether the Nebraska Legislature violated the state's constitution when it passed legislation enabling Governor Dave Heineman to approve the pipeline through an expedited process.² The challenged law also gave TransCanada eminent domain rights without having to first secure a federal permit.³

A Nebraska District court agreed with the landowners in a holding issued on February 9, 2014, stating that, as a "common carrier," the pipeline could not be green-lighted by the Governor, but rather only by the Nebraska's Public Service Commission (PSC).⁴ The Nebraska Supreme Court heard oral arguments in the state's appeal on September 5, 2014. A final decision on the case is expected at any time. If the District Court holding is upheld, TransCanada will have to apply to the PSC for a route. The PSC has the authority to propose a new route in a process that is expected to take nine or more months.

South Dakota

TransCanada's permit for building Keystone XL through South Dakota expired in June 2014. The company filed for a re-certification by the South Dakota Public Utilities Commission (PUC) in September 2014.⁵

On October 28, 2014 the PUC granted "intervenor" status to 43 individuals and groups from South Dakota and Nebraska, many of whom who are challenging the construction and purpose of the pipeline. As intervenors, they will have the opportunity to voice their opposition to Keystone XL, participate in the discovery process, and call TransCanada officials to the stand under oath at hearings that will be held early 2015. The final evidentiary hearing is set for May 5 - 6, 2015.⁶ Until the Public Utilities Commission decides whether to grant or decline certification, **Transcanada does NOT have a permitted route through South Dakota.**

Public concern in South Dakota over the proposed pipeline has grown tremendously since the original permit application submitted over four years ago. The unified tribal nations of the Oceti Sakowin, aka the Great Sioux Nation, are challenging the permit on the grounds of treaty rights,⁷ water rights protection and a lack of proper consultation required by federal law.⁸

¹ *Thompson v. Heineman*, No. S-14-000158, (Neb. Supreme Court, filed Apr. 21, 2014).

² *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

³ Nebraska Legislature, Legislative Bill 1161, Approved by the Governor April 17, 2012, <http://nebraskalegislature.gov/FloorDocs/102/PDF/Slip/LB1161.pdf>.

⁴ *Thompson v. Heineman*, 2014 WL 631609 (Neb. Dist. Ct.) (Trial Order) (2014).

⁵ *Keystone XL Pipeline Updates*, SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, <http://puc.sd.gov/Dockets/HydrocarbonPipeline/keystoneupdate.aspx>.

⁶ Joe Duggan, *Keystone XL opponents will have a chance to be heard in South Dakota*, OMAHA.COM (Oct. 30, 2014), http://www.omaha.com/news/metro/keystone-xl-opponents-will-have-a-chance-to-be-heard/article_1c21b596-392e-5760-90be-af9a34aeeb73.html.

⁷ Tom Poor Bear, *Memo from Oglala Sioux Tribe*, scribd.com (Dec. 9, 2014) <http://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

⁸ Advisory Council on Historic Preservation, <http://www.achp.gov/106summary.html>.

Tribal and Treaty Rights Impacted by the Proposed Keystone XL Tar Sands Pipeline

The Keystone XL tar sands pipeline's proposed route violates basic tenets of Federal Indian Law. The pipeline would infringe upon treaty-protected lands, especially in South Dakota. TransCanada has also failed to properly consult with tribal leaders on plans for the pipeline's construction, violating the U.S. Government's trust obligation toward tribes.¹

Treaty Violation

Although it does not infringe upon reservation land, the current proposed Keystone XL route crosses land protected by treaty. On April 29, 1868, the United States entered into a peace treaty at Fort Laramie with the Oglala Sioux Tribe. The United States agreed in the treaty that all lands west of the Missouri River and within present-day South Dakota would be "set apart for the absolute undisturbed use and occupation" by the tribe and that "no persons ... shall ever be permitted to pass over, settle upon, or reside in the territory described in this article."

The Fort Laramie Treaty's continued enforceability was reinforced in the 1980 Supreme Court case *United States v. Sioux Nation of Indians*.² This decision upheld a Court of Claims ruling that the United States' acquisition of the Black Hills, a region included in the Fort Laramie Treaty, constituted a taking under the 5th Amendment. Accordingly, the Court ruled, the U.S. Government was obligated under the treaty to provide the affected Sioux Tribe with "just compensation."

The Tribal Trust Doctrine and the Duty to Consult

Neither the State Department nor TransCanada have properly consulted with the tribes as required by the federal government's tribal trust responsibility.

The U.S. Government has a trust responsibility to Indian Nations, which is expressed in the Constitution, treaties, statutes, case law, and executive orders. This trust duty, which originally arose from tribes' land cessations, obligates the federal government to protect tribes' unique interests.³ This trust obligation entails a duty to consult with Indian tribes on any activity that would affect their land. This duty is expressed in Executive Order 13175 issued by President Clinton and reinforced by President Obama's Memorandum for the Heads of Executive Departments and Agencies issued on November 5, 2009.

TransCanada has failed to adequately consult with tribes potentially affected by the Keystone XL Pipeline, often claiming that strictly informational meetings have satisfied this requirement. Additionally, TransCanada has sidestepped the consultation process by hiring members of non-local tribes to survey areas that may be of cultural significance to the tribes that actually reside there. This deprives the impacted tribes of any meaningful consultation on Keystone XL's effects on their cultural resources.

The National Historic Preservation Act's Duty to Consult

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), federal agencies must take into account projects' potential effects on locations or objects eligible for inclusion in the National Register prior to authorizing federal spending on that project. Eligible locations or objects may include "[p]roperties of traditional religious and cultural importance to an Indian tribe." Because the Keystone XL pipeline's proposed route runs through traditional tribal lands, the State Department is required to consult with the tribes that have spiritual, cultural, and historical ties to the land along the pipeline route. To date, it has failed to do so.

¹ Memorandum from Tom Poor Bear, Vice President Oglala Sioux Tribe, Dec. 2014, available at <https://www.scribd.com/doc/251533342/Memo-from-Oglala-Sioux-Tribe>.

² 448 U.S. 371.

³ Mary Christina Wood, *Protecting the Attributes of Native Sovereignty: A New Trust Paradigm for Federal Actions Affecting Tribal Lands and Resources*, 1995 UTAH L. REV. 109, 112 (1995).

Challenges associated with Proposed Tar Sands Pipelines

Enbridge's Northern Gateway (525,000 bpd)

Enbridge's proposed Northern Gateway project is a controversial 525,000 barrel per day (bpd) tar sands pipeline across the mountainous terrain and salmon-bearing rivers of north-central British Columbia. In May 2013, the British Columbia government opposed the project in its formal comments to the federal review panel.¹ Polling shows that more than two-thirds of British Columbians oppose the Northern Gateway project.² Moreover, First Nations, with powerful treaty rights which were substantially strengthened by a recent Canadian Supreme Court ruling, have brought a dozen lawsuits against the Northern Gateway project.³ Amid controversies surrounding the project and following a damaging referendum in Kitimat, British Columbia, Northern Gateway's Executive Vice President Janet Holder, the public face for the project, announced her retirement.⁴ In its environmental review of Keystone XL, the State Department considered Northern Gateway too uncertain and speculative to include in its forecast.⁵

Kinder Morgan's TransMountain Pipeline (additional 590,000 bpd)

The expansion of the TransMountain pipeline, another pipeline through British Columbia, would require new permits, the renegotiation of landowner agreements along the route, agreements with First Nations, the dredging of the Vancouver harbor and changes in regulations to allow increased tanker traffic. TransMountain passes through fifteen First Nation's communities and affect many more traditional territories, many of which have stated opposition to the project.⁶ Objections from local political leaders and the public have already prompted the National Energy Board to delay its final report on the project to January 2016.⁷

TransCanada's Energy East Pipeline (1.1 million bpd)

TransCanada's Energy East pipeline would require converting around 3,000 kilometers (1,864 miles) of existing natural gas pipeline and construction of around 1,400 kilometers (870 miles) of new pipe, with the most construction expected in Quebec. While TransCanada only filed its application in late October, 2014, opposition to the project is already significant and growing. Both the governments of Quebec and Ontario have filed as interveners for the project's review.⁸ The impact of building a new pipeline creates a significant hurdle for TransCanada, as Quebec has long touted its pro-environment stance and is not eager to play a role in enabling tar sands expansion plans in Alberta.⁹ At the same time, Ontario's

¹ Argument of the Province of British Columbia Re: Hearing Order OH-4-2011 and File No. OF-Fac-Oil-N304-2010-01 01 Enbridge Northern Gateway Project Application, May 31, 2013, http://www.env.gov.bc.ca/main/docs/2013/BC-Submission-to-NGP-JointReviewPanel_130531.pdf; "B.C. officially opposes Enbridge Northern Gateway pipeline," CBC News, May 31, 2013, <http://www.cbc.ca/news/canada/british-columbia/story/2013/05/31/bc-northern-gateway-rejected.html>.

² "Your Insights on the Northern Gateway Pipeline," *Insights West*, February 4, 2013, <http://www.insightswest.com/news/your-insights-on-the-northern-gateway-pipeline/>.

³ Mychaylo Prystupa, "Janet Holder Quits Northern Gateway Pipeline," *Vancouver Observer*, November 12, 2014, <http://www.vancouverobserver.com/news/janet-holder-quits-northern-gateway-project>.

⁴ *Ibid.*

⁵ State Department, Final SEIS, Jan. 31, 2014, 2.2-34, <http://keystonepipeline-xl.state.gov/documents/organization/221155.pdf>.

⁶ Julie Gordon, "Kinder Morgan Canada pipeline plans hits a mountain of opposition," *Reuters*, October 21, 2014, <http://www.reuters.com/article/2014/10/21/us-canada-pipeline-kinder-morgn-eng-idUSKCN0IA15N20141021>.

⁷ Markham Hislop, "Social license: Enbridge, Kinder Morgan losing BC battle," *Beacon News*, November 15, 2014, <http://beaconnews.ca/blog/2014/11/social-licence-enbridge-kinder-morgan/>.

⁸ Shawn McCarthy, "Opposition builds to Energy East," *The Globe and Mail*, October 13, 2014, <http://www.theglobeandmail.com/report-on-business/opposition-builds-to-energy-east-pipeline-plan/article21082836/>.

⁹ Gerrit De Vynck, "TransCanada Eastern Pipeline Draws Opposition: Corporate Canada," *Bloomberg News*, August 6, 2013, <http://www.businessweek.com/news/2013-08-06/transcanada-eastern-pipeline-draws-opposition-corporate-canada>.

Eminent Domain and the Keystone XL tar sands pipeline

The House and Senate bills that would approve the Keystone XL tar sands pipeline in the 114th Congress -- H.R. 3 and S. 1 -- do nothing to protect property rights. Despite the clause titled "Private Property Savings Clause," the bill's language does nothing to change the flawed eminent domain laws and process that uses eminent domain for private gain, and in fact further legitimizes these unjust processes.¹

TransCanada has used eminent domain on landowners in every state along the proposed pipeline route, except in Nebraska. TransCanada makes frequent threats of using eminent domain on Nebraskans, and has done so since 2010, even though they do not have the current legal ability because of the landowner legal victory last year. That case is now in front of the Nebraska Supreme Court. TransCanada still does not have a route or a permit and therefore cannot use eminent domain in Nebraska.

Eminent domain is a federal and state-by-state legal process for the government to take land for "public purpose."² Over the years, oil and gas companies have abused eminent domain by seizing land for private use. The use of eminent domain for private gain must have a federal and state-based fix to protect property rights. The House of Representatives attempted to give some fixes to eminent domain in a bill that passed last year, however that bill exempts the Keystone XL pipeline.³

Keystone XL is one example of how a company uses the threat of, and/or the actual use of, eminent domain to secure contracts with landowners to then turn around to elected officials and the general public to show that they have "landowner support."

One of the many negative impacts of eminent domain on landowners is if Keystone XL were to be denied, in many of the early contracts forced on landowners, there is no clause that states the land is then returned to the property owner. That means TransCanada can then turn around and sell that land easement to another pipeline company and the landowner has no legal say in the matter.

Dave Domina, the lead attorney in the Nebraska case for the landowners, wrote extensively about routing and eminent domain in a memo to all Nebraska elected officials in October 2011. The memo can be found online and has extensive legal citations for further reading.⁴

¹ This section of H.R. 3 states that "Nothing in this Act alters any Federal, State, or local process or condition in effect on the date of enactment of this Act that is necessary to secure access from an owner of private property to construct the pipeline and cross-border facilities described in subsection (a). 114th Congress, 1st Session, H.R. 3, <http://thomas.loc.gov/cgi-bin/query/z?c114:H.R.3>;

² Eminent domain is part of the US Constitution, the Fifth Amendment's takings clause. National Eminent Domain Power, Cornell Law School, http://www.law.cornell.edu/anncon/html/amdt5bfrag4_user.html.

³ H.R. 1944, the Private Property Rights Protection Act passed Feb. 2014, <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=371032>. Fox News covered the bill <http://www.foxnews.com/us/2012/02/28/house-acts-against-high-court-on-eminent-domain/> as did the Daily Show who brought up the KXL exemption <http://thedailyshow.cc.com/videos/u1knas/little-seizers>.

⁴ Domina Law Group Eminent Domain Memo, <http://www.dominalaw.com/documents/Green-Paper.pdf>.

Attachment 8.4



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

September 17, 2012

TO: Nebraska Department of Environmental Quality

RE: Response to TransCanada's Supplemental Environmental Report (SER) September 5, 2012

A representative group of our District's constituents attended our monthly Board Meeting on September 10, 2012. They expressed their personal concerns about the SER. In particular, in response to the proposed Northern Alternative rerouting of the Keystone XL Pipeline: (1) Sand and porous soils are still being crossed, (2) poisonous coal tar crude oil should not cross the Ogallala Aquifer because any release of will contaminate their immediate area, water supply and land, (3) Why can't the Keystone XL Pipeline be routed parallel to the existing Keystone 1 Pipeline, which is at the easterly edge of the Ogallala Aquifer and sandy soils. They then expressed their appreciation for the District's proactive participation in the proposed pipeline review process.

The Board then challenged the constituents to continue their personal involvement in the process with the goal of protecting their interests as well as Nebraska's most precious natural resource – the High Plains Aquifer System and in particular the underlying Ogallala Aquifer. The Board suggested the constituents could consider writing to and/or meeting with the Nebraska Department of Environmental Quality Staff, Nebraska Legislature and the Nebraska Governor.

The LNNRD Board of Directors re-affirms our reasons for opposing the TransCanada Keystone XL Pipeline as set forth in our letter to NDEQ on May 31, 2012 (attached).

There continues to be enormous interest and competition among oil and natural gas companies to construct new pipelines for conveying both Canada's and the United State's developing crude oil supplies to refineries and ports in the United States and also redistribute petroleum products and natural gas across the United States as markets for demand change.

Oil companies have in the past and will continue in the future to construct new pipelines parallel to existing pipeline corridors (for example the Rockies Express, Platte System, Enbridge, Flanagan South, Pony Express and...) Why? Because the review process for the new pipelines in existing pipeline corridors/right-of-ways is not as rigorous and often subject to less scrutiny. In addition, in most locations other than the heartland of America (including across the mid-section of Nebraska) there is limited land available for new pipelines. The engineering challenges of paralleling existing pipelines have been overcome with improved construction methods and pipeline design. It is also worthy to recognize that as markets for crude and refined oil products and natural gas change the existing pipeline for conveying them are modified to transport crude oil or refined petroleum products instead of natural gas, and vice versa. Therefore, the proposed Keystone XL Pipeline for Canadian tar sands crude may in the future convey another product. In addition TransCanada may sell space in the Keystone XL Pipeline corridor to other oil companies for their new pipeline. Landowners may find in the future, more than one pipeline and types of products being conveyed across their private land easement.

TransCanada will resist to the very end of the process and until Nebraska's decision makers give TransCanada no other choice but to route the Keystone XL Pipeline parallel to and in the same corridor as the existing Keystone 1 Pipeline.

It is very obvious in the SER that TransCanada did not clearly and concisely answer Nebraska Department of Environmental Quality's very specific request in their Feedback Report, Chapter 7, information requested from Keystone, Paragraph 7.5.1, Additional Information Needs Arising From Public Comments on Page 37. Perhaps the most frequently asked question was: "Why didn't Keystone follow the same corridor as its first Keystone Oil Pipeline? Keystone should provide a clear and concise explanation of why the alternative was rejected. Keystone did not follow NDEQ's instructions.

In closing, the LNNRD Board expresses sincere thanks to the Nebraska Department of Environmental Quality Staff for an excellent Feedback Report.

Sincerely,
LNNRD Board of Directors

Attachment: 1



LOWER NIOBRARA NATURAL RESOURCES DISTRICT

410 Walnut Street • P.O. Box 350
Butte, NE 68722-0350

Phone: (402) 775-2343
Fax: (402) 775-2334

May 31, 2012

The LNNRD Board has been unanimously opposed to routing the Keystone XL Pipeline across the Nebraska Sandhills and underlying Ogallala Aquifer since the beginning of the public review process. In the 1980's, NRD's were directed by the Nebraska Legislature to develop Groundwater Management Plans to protect the quality and quantity of groundwater, which is most often described as Nebraska's "most precious natural resource". The Board takes very seriously the protection of these two natural resources which are absolutely essential to Nebraska's present and future agri-business, recreational pursuits, industrial and commercial growth, and municipal/local drinking water supplies in this region. The newly proposed Trans Canada Keystone XL Pipeline route still crosses large areas of Valentine Soils and the Ogallala Aquifer.

Concerns for the Ogallala Aquifer are being pushed aside now that the proposed new route, on paper, avoids the Sandhills. The Board maintains their objections to the re-routing and considers the aquifer just as important to avoid as the Sandhills. The Board also recognizes many pipelines crisscross the aquifer and areas with sandy soils now, but adding the contamination risks associated with tar sands crude to this region of the Ogallala Aquifer and the sandy soil pastures and croplands is not warranted.

The LNNRD Board objects to being forced to accept TransCanada's goal of building the shortest and cheapest pipeline at the risk of detrimental effects to our citizens, private land owners and the water resource they depend on for their livelihoods. A better route for the XL pipeline needs to be chosen!

The Board feels the best route across Nebraska is parallel to the existing Keystone Pipeline. Even though this route may be somewhat longer, the savings accrued from eliminating unknowns and surprises by building in a previously studied and completed ROW are significant. The same emergency response plans, materials, and personnel can be used for both pipelines and additional savings will accrue from co-locating maintenance crew facilities, material storage lots, and sites for pumping stations and storage tanks. There will be significantly less driving to and from points on the pipelines via rural roads.

Across the states of Montana, North Dakota, and South Dakota the proposed route avoids crossing Indian Reservations, wildlife refuges, and environmentally sensitive areas. In Nebraska, the TransCanada proposed route for the XL Pipeline crosses areas that are very sensitive to us: the Ogallala Aquifer and the Sandhills. Nebraskans will be stuck with the consequences of a crude oil pipeline located there. These resources are absolutely critical to Nebraska's jobs and economy, now and in the future. Land owners and producers in Nebraska are frustrated that their concerns continue to fall on deaf ears.

The LNNRD Board of Directors encourages the Nebraska Department of Environmental Quality to declare that the Trans Canada Keystone XL Pipeline newly proposed route does not meet the common good and welfare of the state and will present unacceptable hazards to Nebraska's most precious natural resource, agricultural resources, aesthetics and communities in this region. The LNNRD Board of Directors strongly and unanimously agrees that the most sensible routing alternative, as well as, the quickest alternative for getting on with building the TransCanada XL Pipeline across Nebraska is simply to avoid crossing this region of the Ogallala Aquifer and the Sandhills and locating it parallel and adjacent to the existing Keystone Pipeline.

Sincerely

Lower Niobrara Natural Resources District Board of Directors (unanimously approved 6-4-2012)

Attachment 8.5

A number of complementary leak detection methods and systems would be available within the OCC and would be linked to the SCADA system. Remote monitoring would consist primarily of monitoring pressure and flow data received from pump stations and valve sites that would be fed back to the OCC by the SCADA system. Software based volume balance systems would monitor receipt and delivery volumes and would detect leaks down to approximately 5 percent of pipeline flow rate. Computational Pipeline Monitoring or model based leak detection systems would monitor small pipeline segments on a mass balance basis. These systems would detect leaks down to approximately 1.5 to 2 percent of pipeline flow rate. Computer based, non-real-time, accumulated gain/loss volume trending would assist in identifying seepage releases below the 1.5 to 2 percent by volume detection thresholds. If any of the software-based leak detection methods indicate that a predetermined loss threshold has been exceeded, an alarm would be sent through SCADA and the Controller would take corrective action. The SCADA system would continuously poll all data on the proposed pipeline at an interval of approximately 5 seconds.

In the event of a leak, the operator would shut down operating pumping units and close the isolation valves. It would take approximately 9 minutes to complete the emergency shut-down procedure (shut down operating pumping units) and an additional 3 minutes to close the isolation valves. Some commenters have expressed concern that the Ludden spill on the existing Keystone Oil Pipeline Project (see Table 3.13.1-4) took longer than 12 minutes to shut down. In the case of the May 7, 2011 Ludden spill, the time from 3:51 to 4:26 pm MST was used to verify flow imbalance trends detected by the SCADA system. At 4:26 pm the Keystone Oil Control Center (OCC) received visual verification of a leak from a local farmer, thus confirming that a leak had occurred and system shutdown was immediately initiated. Shutdown was completed by 4:35 pm MST. The elapsed time from leak confirmation through visual verification to complete system shutdown was 9 minutes. The incident emphasizes the importance and difficulty of leak verification in some instances. The incident confirms that the uncertainty in time to shut down for any leak is primarily a function of the time required to verify that a leak has occurred.

In addition to the SCADA and complimentary leak detection systems, direct observation methods including aerial patrols, intermittent maintenance patrols, and public and landowner awareness programs would be implemented to encourage and facilitate the reporting of suspected leaks and events that could suggest a threat to the integrity of the pipeline.

EPA expressed concern that relying solely on pressure drops and aerial surveys to detect leaks may result in smaller leaks going undetected for some time, resulting in potentially large spill volumes. In light of those concerns, EPA requested consideration of additional measures to reduce the risks of undetected leaks. A PHMSA report (2007) addressed the state of leak detection technology and its applicability to pipeline leak detection. External leak detection technology addressed included liquid sensing cables, fiber optic cables, vapor sensing, and acoustic emissions. In that report PHMSA concludes that while external leak detection systems have proven results for underground storage tank systems there are limitations to their applicability to pipeline systems and they are better suited to shorter pipeline segments. Their performance even in limited application is affected by soil conditions, depth to water table, sensor spacing, and leak rate. While it is acknowledged that some external detection methods are more sensitive to small leaks than the SCADA computational approach, the costs are extremely high and the stability and robustness of the systems are highly variable. Therefore, long-term reliability is not assured and the efficacy of these systems for a 1,384-mile long pipeline is questionable.

Relative to additional ground patrols, Keystone responded to a data request from DOS concerning the feasibility of more ground-level inspections. Keystone responded that based on land owner concerns, additional ground-level inspections are not feasible due to potential disruption of normal land use activities (e.g., farming, animal grazing). However, it should be noted that in the normal course of maintenance Keystone would have crews at various places along the proposed Project corridor (e.g.,

Attachment 8.6

Leak Prevention and Detection



Operations Control Center

TransCanada's Keystone XL Pipeline will be remotely controlled from an Operations Control Center where highly trained pipeline controllers monitor the operation of the pipeline and provide 24-hour pipeline monitoring 365 days a year. The pipeline controllers ensure that the pipeline is running safely and efficiently. The control center includes an operational control system, a leak detection system, and a satellite communication network.

Remote control of the pipeline uses a computer case system known as Supervisory Control and Data Acquisition (SCADA) to monitor and control the pipeline system. Data from all sites is read and sent to the Control Center approximately every five seconds.

The SCADA system will include:

- Redundant, fully functional back-up computers and a second control center in case there is a failure in the main control center.
- Automatic functions that will not allow the pressure at any station or anywhere in the pipe to exceed safe values.
- Local safety limits at pump stations that will provide pipeline pressure protection if SCADA communications are interrupted.

In addition to the SCADA system, the pipeline will feature complimentary and overlapping leak detection methods and systems, including:

1. **Remote Monitoring:** Operators at the Operations Control Center monitor, on their computer screens, all of the pressure and flow data received from pump stations and valve sites. Remote monitoring is typically able to detect large leaks immediately so the line can be shutdown and all valves closed, to limit the size of the spill.
2. **Software-based Volume Balance Systems:** This system compares the injection and delivery volumes and provides alarm to the pipeline controller when there is a difference between what is input to the pipe and what is delivered.
3. **Computational Pipeline Monitoring:** The approach, also known as model-based leak detection, uses all the pipeline pressures and flow rates to calculate flow balances on smaller sections of the pipe. This system uses the SCADA data to create a sensitive leak detection model. TransCanada selected leak detection model will be capable of detecting leaks down to a level of approximately 1.5 per-cent - 2 per-cent of pipeline flow rate. In addition, TransCanada will employ an over/short calculation to identify leaks below this threshold.

4. **Direct Observation:** TransCanada will also utilize aerial patrols, conducted 26 times per year—approximately every other week—as well as public and landowner awareness programs designed to encourage and facilitate the reporting of suspected leaks and events that may suggest a threat to the integrity of the pipeline.

Overall, the Keystone XL Pipeline will employ industry best practices and materials to prevent leaks and to detect them if they do occur, so that appropriate actions may be taken. Our number one priority continues to be employee and public safety through all our activities.

Contact Us

For more information, please contact us:

Project Hot Line: 1.866.717.7473
Email: keystone@transcanada.com
Project web page: www.transcanada.com/keystone

Alternatively, you can write to us with attention to:

Keystone XL Pipeline
450 – 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

Or

Keystone XL Pipeline
2700 Post Oak Blvd., Suite 400
Houston, TX 77056

1. Introduction

In response to specific concerns raised by the State of Nebraska, TransCanada Keystone Pipeline LP (Keystone) has agreed to reroute its proposed Keystone XL Pipeline Project to avoid the Sandhills region in Nebraska (Nebraska Reroute). This report, which is being provided to the Nebraska Department of Environmental Quality (NDEQ), presents an initial analysis of alternative pipeline corridors that avoid the Sandhills. Each of the "corridors" discussed in this report represents a 2,000-foot-wide area. The statistics presented and maps provided represent the centerline of these 2,000-foot-wide corridors.

KXL Project Overview

The Keystone XL Pipeline Project (hereinafter referred to as the "Keystone XL Project" or the "Project") is a proposed approximate 854-mile, 36-inch diameter pipeline to transport crude oil from Hardisty, Alberta, Canada to Steele City, Nebraska. From That point, the project will connect with the existing Keystone Pipeline Cushing Extension. At the terminus of the Cushing Extension, the oil will be delivered into a new 36-inch pipeline to be constructed as the Keystone Pipeline Gulf Coast Project for transportation to refinery markets in the Gulf Coast area of the United States. The Project will have an initial nominal throughput capacity of 700,000 barrels per day (bpd) and can be expanded to an ultimate nominal capacity of 830,000 bpd through the installation of additional pumping capacity.

Background and Reroute Report Purpose

In September 2008, Keystone filed an application with the U.S. Department of State (DOS) for a Presidential Permit authorizing the construction and operation of the proposed Keystone XL Pipeline Project at the U.S.-Canada border crossing location in Montana. At that time, the proposed project consisted of a 2,232-mile, 36-inch diameter pipeline and appurtenant facilities to transport crude oil from Hardisty, Alberta, Canada to Nederland/Port Arthur, Texas. Upon receipt of that application, DOS led a comprehensive environmental review of all aspects of the original Keystone XL Project. The environmental review culminated August 26, 2011 with the release of the Final Environmental Impact Statement (FEIS) for the project. This review was the most detailed and comprehensive environmental review ever undertaken for a cross border crude oil pipeline. The FEIS concluded that "[t]he analysis of potential impacts associated with construction and normal operation of the proposed Project suggest that there would be no significant impacts to most resources along the proposed Project corridor..." (FEIS at p.3.15-1).

In November 2011, the DOS determined that, in order to make the required National Interest Determination with respect to the original Keystone XL Pipeline Project, it was necessary to conduct an in-depth assessment of potential alternative routes that would avoid the Sandhills region in Nebraska. Pursuant to authorization provided in Nebraska statute LB 4 – as adopted in the Special Legislative Session of November 2011 – the NDEQ also commenced leading the effort to assess alternative routes through Nebraska. The NDEQ also commenced negotiation of a Memorandum of Understanding with DOS, as provided for in LB – 4, in order to collaborate with DOS in the preparation of a Supplemental Environmental Impact Statement. Subsequently, the NDEQ hired a contractor to assist with the route review and published a map delineating the "Sandhills" region that any alternative route must avoid.

In late December 2011, Congress included a provision in the Payroll Tax Cut Extension Act requiring the President to make a decision on the Presidential Permit within 60 days. This Congressional action caused the State Department to suspend its work on an MOU with the NDEQ for the reroute process. This caused the NDEQ to suspend its work with respect to review of alternative routes in the State. In January 2012, the DOS announced its determination that the project – as presented and analyzed at that time – did not serve the national interest. The determination was based not on the merits of the project, but on

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

	A	B	C	D
1	Pipeline capacity (bpd)	Gallons/day	Leakage at 1.5%	Leakage at 2%
2		(42gal/barrell)	(gpd)	(gpd)
3				
4	700,000 barrels	29,400,000	441,000	588,000
5				
6	830,000	34,860,000	522,900	697,200

700,000 x 42 = 29,400,000 gallons 1.5% = 441,000 gallons
leaking a day

against water 1.5% 8LBS 50 we

used that figure for weight

1.5% 700,000 capacity

- 441,000 gallons

8LBS per gallon

3,528,000 = weight

3,528,000

2%

588,000

x 8

4,704,000

4,704,000

94.08

each 52mi tanker truck 3,528,000

830,000 capacity at 2% leak

34,860,000

x 8

278,880,000 pounds

50,000

111.5 52mi. tank trucks

Attachment 8.8

Bonny

Nebraska Earthquakes

April 1867 ~~ January 2016

April 24, 1867 ~ Lawrence KS, but felt across much of Nebraska

Nov. 15, 1877 ~ Probably the strongest earthquake in Nebraska history. There were two shocks 45 minutes apart; the second was the strongest. At North Platte, the shock had intensity VII effects, buildings rocked at Lincoln, and walls were damaged at Columbus. The quake was felt across most of Nebraska and portions of Iowa, Kansas, the Dakotas, and northwestern Missouri.

July 28, 1902 ~ Intensity V earthquake occurred near Battle Creek in northeastern Nebraska. The tremor was reported sufficient to rattle dishes and shake bell towers at several points.

Feb 26, 1910 ~ Several small earthquakes shook house (IV-V) in Columbus.

July 30, 1934 ~ Dawes County ~ Chadron ~ Nebraska Panhandle

March 1, 1935 ~ Two earthquakes, 4 minutes apart shook the area near Tecumseh.

April 14, 1961 ~ Beaver City ~ South-central Nebraska

March 28, 1964 ~ 5.1 earthquake in Western Nebraska; causing many cracks in a road 10 miles south of Merriman; steep banks along the Niobrara River tumbled (Intensity VII); plaster fell at Rushville; part of a chimney toppled at Alliance. The quake occurred one day after the disastrous Alaska quake.

Nov.23, 1967 ~ Quake reportedly lasting more than two minutes shakes windows, rattles dishes in north-central Nebraska and south-central South Dakota.

Nov. 9, 1968 ~ Lincoln feels slight effects of a 5.5 magnitude quake centered in southern Illinois.

Oct. 15, 1972 ~ 3.7 magnitude (Intensity V) earthquake in Bassett; also felt in Ainsworth and Newport.

May 13, 1975 ~ 3.5 magnitude 27KM ~ Bartlett and in Holt County ~ Deloit Township 3.5 magnitude 10KM

May 7, 1978 ~ 3.8 magnitude earthquake in Hyannis; quake shook the oak pews and brick building of All Saints Church.

April 8, 1979 ~ 2.8 magnitude earthquake in St. Paul ~ 22KM

June 30, 1979 ~ 3.3 magnitude earthquake in Fairbury ~ 16KM

Oct. 9, 1981 ~ 3.3 magnitude earthquake in St. Paul ~ 8KM

June 3, 1982 ~ 2.24 magnitude earthquake is centered about four miles northeast of Wymore.

Nov. 14, 1982 ~ 4.3 magnitude quake reported along the eastern end of the Nebraska-South Dakota border; Public's reaction ~ thought it was a big explosion ~ near the Gavins Point Hatchery near the dam, windows actually trembled and you could see them move.

Jan. 1, 1987 ~ 3-3.5 magnitude quake centered at Crawford

June 10, 1987 ~ 5 magnitude earthquake centered in Illinois, is felt in Omaha as Press box atop Ak-Sar-Ben grandstand sways

Feb 9, 1989 ~ 4 magnitude quake shakes houses and beds in Cherry County.

July 18, 1990 ~ 3.0 magnitude quake centered near Ord ~ 10KM; rattles dishes and shakes houses.

March 30, 1993 ~ 2.9 magnitude quake centered near Peru; shakes buildings at Peru State College and is felt as far south as Fall City.

Jan. 24, 1994 ~ 3.3 magnitude quake centered 15 miles northwest of Ainsworth; just a week after a disastrous Los Angeles earthquake.

Feb. 6, 1996 ~ 3.6 magnitude quake centered around Bloomfield/Creighton ~ 12KM

Aug. 9, 1997 ~ earthquake at Clarkson in east-central Nebraska

Aug. 19, 1997 ~ 3.4 magnitude quake in Stanton ~ 17KM

Nov. 13, 2001 ~ 3.3 magnitude quake in Cambridge in southwest Nebraska ~ 31KM ~ centered on the NE-KS border between McCook and Oberlin KS.

June 20, 2002 ~ 3.5 magnitude quake was centered near Greeley, 20 miles east of Ord; Reviewed by seismologist and Public report of 16.

Nov. 4, 2002 ~ 4.3 magnitude with 5KM depth ~ quake hits northeast Nebraska in the Saratoga Township NNW of O'Neill and cracking walls, rattling windows and knocking down shelves in Butte (Boyd Co.) ~ U.S. Ecology says it has taken earthquakes into consideration during planning for a proposed nuclear waste dump in Boyd County. The dump was never built.

Feb 14, 2003 ~ 3.3 magnitude quake in Arapahoe ~ 12KM

May 26, 2003 ~ 4.4 magnitude quake shakes parts of western South Dakota and northwestern Nebraska ~ centered about 30 miles northeast of Pine Ridge.

July 16, 2004 ~ 3.3 magnitude quake is centered about 20 miles southeast of Auburn. Tremors felt from Auburn to Brownville and Nemaha and as far north as central Sarpy County. ~

Dec. 17, 2005 ~ 2.5 magnitude with 5.00KM depth quake hits near Newport in northern Rock County.

Feb. 2, 2006 ~ 2.9 magnitude quake (6KM) felt in north-central Nebraska, it was centered 30 miles east of Ainsworth; felt in Bassett. Reviewed by seismologist.

Sept. 7, 2006 ~ 2.6 magnitude quake ~ Gordon NE ~ 19KM ~ Reviewed by seismologist.

April 4, 2007 ~ 2.7 magnitude quake ~ Chadron NE ~ 27KM ~ Reviewed by seismologist.

April 16, 2007 ~ 3.0 magnitude quake ~ Hayes Center ~ 25KM ~ Reviewed by seismologist and public report of 12.

Dec. 16, 2009 ~ 3.5 magnitude quake centered northwest of Auburn is felt throughout Southeast Nebraska.

March 20, 2010 ~ 2.7 magnitude quake ~ 9KM ~ Springview ~ (KeyaPaha Co.) ~ Reviewed by seismologist and public report of 16.

Sept. 2010 ~ 3.0 magnitude quake ~ Oconto NE

Sept. 26, 2010 ~ 3.1 magnitude quake ~ Cozad ~ 27KM ~ Reviewed by seismologist and public reports of 170.

Nov. 18, 2010 ~ 3.3 magnitude quake ~ Schuyler ~ 11KM ~ Reviewed by seismologist and public reports of 128.

March 10, 2011 ~ 2.9 magnitude quake ~ Harrison ~ 25KM ~ Reviewed by seismologist and public reports of 24.

Nov. 14, 2011 ~ 4.0 magnitude quake ~ Chadron ~ 41KM ~ Reviewed by seismologist and public reports of 84.

Nov. 19, 2011 ~ 2.8 magnitude quake ~ Chadron ~ 11KM ~ Reviewed by seismologist.

Aug. 6, 2012 ~ 2.5 magnitude quake ~ Mullen ~ 21KM ~ Reviewed by seismologist and public report of 6.

Oct. 18, 2012 ~ 3.6 magnitude quake ~ Hyannis ~ 28KM ~ Reviewed by seismologist and public report of 50.

Jan. 14, 2014 ~ 2.9 magnitude quake ~ Wymore ~ 10KM ~ Reviewed by seismologist and public report of 40.

June 18, 2015 ~ 3.3 magnitude quake ~ Valentine ~ 15KM ~ Reviewed by seismologist and public report of 8.

Aug. 19, 2015 ~ 3.6 magnitude quake ~ Thedford ~ 34KM ~ Reviewed by seismologist and public report of 18.

Nov. 10, 2015 ~ 3.2 magnitude quake ~ Mullen ~ 52KM ~ Reviewed by seismologist and public report of 2.

Jan. 4, 2016 ~ 3.5 magnitude quake ~ Broken Bow ~ 16KM ~ Reviewed by seismologist and public report of 42.

Attachment 8.9

I am Bonny Kilmurry, an individual intervener on Docket HP14-001, hearing scheduled for July 27 through August 4, 2015. This is my written formal intervener statement. Thank you for allowing me the opportunity to participate in this process.

TransCanada is not the good neighbor it purports to be. Not only does TransCanada exaggerates it's job numbers,¹ the company also has a long history of spreading half-truths about the efficacy and safety of their exiting pipelines and the proposed Keystone XL pipeline.² As a landowner who is affected by the proposed Keystone XL pipeline, I have a financial and emotional interest in the fate of this proposed pipeline; however, what began as gut response is now based on factual research. I can now say, that TransCanada actions are not neighborly, and their actions speak to a blatant disregard of the land and water I seek to preserve.

¹ *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

² *Factcheck.org*. "Pipeline Primer." March 10, 2014.
<http://www.factcheck.org/2014/03/pipeline-primer/>

TransCanada exaggerates pipeline safety. Let's look TransCanada's record for the first Keystone pipeline. The company boasted that this project would only have one leak in a seven-year period; however, in its first year of operation twelve were reported.³ In one such leak, a six-story geyser unleashed 21,000 barrels of oils in North Dakota.⁴ Furthermore, there are numerous issues with the southern leg of Keystone I. In one such instance, "a mandatory inspection test revealed a section of the pipeline's wall had corroded 95%, leaving it paper-thin in one area (one-third the thickness of a dime) and dangerously thin in three other places, leading TransCanada to immediately shut it down."⁵ The public was never notified of these issues. TransCanada claims to have speedily dealt with these issues, but I think this is more of a symptom of their lack of neighborliness. If the pipeline was so safe, then why would it leak twelve times in its first

³ Lacy, Stephen. *Climate Progress*. "After 12 Oil Spills in One Year, TransCanada Says Proposed Keystone XL Pipeline Will Be Safest in U.S." August 17, 2011.

<http://thinkprogress.org/climate/2011/08/17/297576/oil-spills-transcanada-keystone-xl-pipeline/>

⁴ O'Connor, Phillip. *St. Louis Post-Dispatch*, "Keystone oil pipeline shut down after leak." May 10, 2011.

http://www.stltoday.com/news/local/metro/article_dae7b66ee0c5-5677-9acd-0773efb0d8d1.html

⁵ Dermansky, Julie. *Desmog*. "Exclusive TransCanada Keystone 1 Pipeline Suffered Major Corrosion Only Two Years In Operation, 95% Worn in One Spot," April 30, 2015.

<http://www.desmogblog.com/2015/04/30/exclusive-transcanada-keystone-1-pipeline-suffered-major-corrosion-only-two-years-operation-95-worn-one-section>

year? If the pipeline was so sturdy, why would TransCanada need to replace major portions of the route in the pipeline's first year of operation?

I also believe that TransCanada has a corporate culture that flouts regulations in favor of profit. Evan Vokes, a former engineer for the company, made a formal complaint about TransCanada's non-compliance of regulations to Canada's National Energy Board (NEB) in 2012. From this formal complaint, the NEB found that "...many of the allegations of regulatory non-compliance identified by the Complainant were verified by TransCanada's internal audit."⁶ By 2014, TransCanada had dealt with their welding issues, however, these problems were only solved after the formal complaint was filed with the NEB.⁷ Prior to contacting the NEB, Vokes had voiced his concern within internal channels at TransCanada. These complaints were simply ignored. This story is not isolated. In March of this year, another individual brought "...a dozen allegations that deal with the

⁶ CBC News. "Whistleblower Forced Investigation of TransCanada Pipelines," October 17, 2012.
<http://www.cbc.ca/news/canada/whistleblower-forced-investigation-of-transcanada-pipelines-1.1146204>

⁷ CBC News. "TransCanada Whistleblower's Complaints Validated by the NEB," February 25, 2015.
<http://www.cbc.ca/news/canada/edmonton/transcanada-whistleblower-s-complaints-validated-by-neb-1.2550175>

timeliness, quality and reporting of repairs on [TransCanada's] Alberta pipelines" to Canada's NEB.⁸ These allegations are currently under investigation.

I am happy to hear that TransCanada dealt with its prior regulatory allegations; however, it concerns me that TransCanada only dealt with these issues after they were under investigation by the NEB. These instances are not neighborly. The company knows the regulations, and they have a duty to comply. Since these instances are far from isolated, I am concerned that this trend of ignoring regulations will persist with the Keystone XL pipeline.

I am also concerned with TransCanada's treatment of the landowners. Lori Collins from Paris, Texas welcomed TransCanada when the company wanted to place the southern leg of the Keystone XL pipeline across her land.⁹ The men in her family are all oil field worker, and she

⁸ *Canadian Manufacturing*. "NEB Launches New Investigation Into TransCanada Pipeline," March 20, 2015.
<http://www.canadianmanufacturing.com/manufacturing/neb-launches-new-investigation-into-transcanadas-pipelines-146415/>

⁹ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014.
<http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

strongly supported the pipeline construction. In 2012, during construction of the pipeline on their land, a backhoe dug up the Collins' septic system.

Collins was not concerned because the TransCanada land agent assured her that the company would promptly fix the problem. This did not happen.

Instead their house was filled with raw sewage, and the family had to move.

A year and a half after this incident the company offered the family \$40,000

to fix the damage, only to backtrack their offer. Finally, nineteen months

after the septic destruction, TransCanada settled with the Collins family out

of for court for \$479,000. The former TransCanada supporter was

exhausted, and in an interview with the Texas Observer, Collins said, "...

they sucked us dry. They took our home, our livelihood, our work from

us."¹⁰

From the construction issues of the first Keystone pipeline, to their regulatory issues in Canada, I see a troubling trend. These examples show

that TransCanada is far from neighborly. As a life-long resident of the

Sandhills and landowner along the Keystone XL pipeline, I have a vested

¹⁰ Elbein, Saul. *Texas Observer*. "Crossing the Line," September 17, 2014. Web
<http://www.texasobserver.org/keystone-xl-transcanada-crossing-line/>

SD PUC Commissioners
HP14-001 Hearing
July 24, 2015

interests in your Commission's decision. As an informed citizen, I am concerned. I see a company that values profits over the livelihoods of South Dakota's citizens. I ask that your Commission takes these facts into consideration, and I thank you for the opportunity to present my findings to you.

Regards,

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